Dr. REGA SURYA RAO

LECTURES ON INTERPRETATION OF STATUTES

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LECTURES ON
INTERPRETATION OF STATUTES

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TO

MY REVEREND PARENTS

Late Shri. Rega Appa Rao

&

Late Smt. Kantharatnam

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PREFACE

The present subject 'Interpretation of Statutes is of great significance and growing importance, prescribed for study as compulsory and optional paper for 3 years and 5 years Law Degree, Post Graduation and Diploma Courses in Law in all Indian Universities. There are three main authorities in the Government of any State namely, the Executive, Legislature and Judiciary, which are popularly known as the "Three Organs of the State". When an Act or Legislation is proposed to be passed/enacted, a bill to that effect is placed before the legislature by the Executive. Then the bill is to be passed by the both houses of the legislature (Parliament). After the bill is passed, it is sent to the president for his/her assent. After the bill is assented by the president, the Executive publishers the bill in official gazette for its enforcement as law. Later, the judiciary interprets the law in strict adherence to the intention of the legislature to achieve the object of the law enacted, by applying the principles of justice, equity, custom etc. to deliver pure and impartial justice.

In India, some branches of law remain uncodified (Eg. Law of Torts, Administrative Law etc.) Certain concepts/ areas of law are not clear/uncertain (Eg. The Theory of Basic Structure coined by the Supreme Court in the case of *Kesavananda Bharati vs. State of Kerala*-Sovereign-Non-Sovereign Dichotomy i.e. the liability of the State/ Government for the wrongs (Torts and breach of contracts) committed by the Government servants etc.). The lawlessness and uncertainity in law has been overshadowed by the judiciary with its power of judicial review through effective interpretation of law, while deciding the case and delivering landmark judgments. Therefore, the role of judiciary in interpretation of statutes (Laws/Acts/ Enactments) contributes a lot to achieve the ideals and goals enshrined in the preamble of our Constitution.

With the encouragement and inspiration of my well-wishers, I started writing books in 1989 and published on my own two maiden ventures viz. Elements of Law of Torts in 1990, Outlines on Indian Legal and Constitutional History in 1993 and study material on 22 subjects received

overwhelming response in a short span of time and drew the attention of one of the leading publishers in India M/s. Asia Law House, Hyderabad, who have published so far my works on more than 22 titles/subjects and also got translated in to Hindi, more than 15 titles and 2 titles in Telugu published by Asia Law House, Hyderabad so far and the remaining will be released in due course. His works on nearly 30 titles are undertaken to be translated into different Indian languages by other publishers in India. Therefore, we have undertaken to release/publish one by one, the remaining titles of Law, which are not released so far.

I wish to express my profound gratitude to my eldest brother, Prof. Rega Jaganmohan Rao, Retd. Principal, University College of Law, Andhra University, Late Shri S. Prasada Rao, Retd. Joint Commissioner of Labour, A.P. Shri V. Bangar Raju, Retd. Chief Manager, Hindustan Shipyard Limited, Visakhapatnam, Late Dr. P. Koteswar Rao, Retd. Prof. of Law, S.V. University, Tirupati, Dr. K. Vishnu Murty, Retd. Prof. of Law, K.U., Warangal (A.P.) Dr. N.S. Jagannadha Rao, LL.M., Ph.D., D. Lit. (Law), Retd. Prof. of Law, Berhampur University (Odihsa), my research guide and the first recipient of D.Lit. in Law in the States of Odisha, Andhra Pradesh and some other States, my research guide Prof. B.S. Murty, Retd. Prof. of Human Resource Management, A.U., Shri K. Jawaharlal, Member, Governing Body, Sir C.R.R. Institutions, Eluru, (A.P.), Smt. Vijayamala Raja Bhonsale, (Advocate, High Court of Mumbai), Adv. Shri Rameshchandra S. Bhonsale, Ex-Chairman, Phaltan Urban Co-op. Bank Ltd.), Shri Ranjitsinh R. Bhonsale, (Advocate, High Court of Membai), Chairperson, Secretary and Treasurer respectively of the Priyadarshini Dnyan Probhodhini Sanstha's Law College, who are collectively and independently instrumental for what I am now. I owe duty to thank my wife Mrs. Balivada T. Gowri, Advocate and my sons Srinivas Uday Kiran, Technical Head Wipro Technologies, Bangalore, (CSE), Srinivas Arun Kiran, B.E. Team Manager, Deutsche Bank Group, Pune, but for whose encouragement and co-operation, I could not have been in a position to bring out the number of academic ventures on Law. I acknowledge my heartfelt thanks to Shri. Bharat Bhushan Gogia and Nirmit Gogia of Gogia Law Agency for their encouragement and co-operation in getting this work

published. I would fail in my duty if I did not acknowledge my gratitude to the authors, whose works I have consulted and whom I have quoted in this book.

"Above all it must be hidden truth that the love, affection, blessings and benedictons of my beloved parents late Shri Rega Appa Rao and Smt. Kantha Ratnam, the sole reason for my gradual academic elevation".

AUTHOR

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LECTURES ON

INTERPRETATION OF STATUTES

LECTURE - I

INTRODUCTION

Earlier, there was no distinction as to private law, public law, criminal law, law of torts etc. With the appointment of ***Law Commission In 19th Century*** (First Law Commission in 1834, Second Law Commission in 1853, Third Law Commission in 1861, Fourth Law Commission in 1879 and the Fifth and Permanent Law Commission after Indian Constitution in 1955), the process of codification –(codification is a process by which the principles of law are transformed into a written and systematically arranged code) was taken up and various branches of public law namely public international law, constitutional law, criminal law etc., and different branches of private law namely Law Of Contracts, Property Law etc.; have been passed. Eg. The Indian Penal Code, 1860, The Indian Contract Act 1872, The Transfer of Property Act, 1882, The Code of Criminal Procedure, 1973, The Companies Act 2013 etc. The purpose of any branch of law *i.e.* general law or special law is to regulate human conduct/ behaviour from wrong doing. Therefore, the main function of a state is to maintain law and order and to ensure peace and security to the public. The state *i.e.* government with the help of law, through the administration of justice, maintains the law and order and establishes peace in the society. This lecture deals with the following concepts: -

SYNOPSIS

1. Authorities of Law Making : The executive, Legislature and Judiciary.
2. State : Meaning, Definition and elements.
3. Law : Meaning Definition, Features etc. and
4. Sources of Law

* * * * *

1. Authorities of Law Making : (The Executive, Legislature, and Judiciary) :--There are three authorities of law making in a state namely, the executive legislature and judiciary, which are popularly known as the "Three organs of the Government". The executive proposes (and enforces) a law and presents a bill to that effect before the legislature. Then the legislature, which is the law making authority passes the bill presented/tabled before it and sends it to the President for his/her assent. Then the executive publishes the bill assented by the President, in official gazette for its enforcement. Later, the judiciary interprets the law (so passed and published in the official Gazette)" in strict adherence to the principles of justice, equity, custom (customary practice) etc, to deliver pure and impartial justice.

In a democratic country, there are two types of Governments namely-

(1) Presidential form of Government and (2) Parliamentary form of Government. In a Presidential form of Government, the President is the real executive head and the ultimate authority. The best example for the Presidential form of Government is United States of America (U.S.A.) Where as in a parliamentary form of Government, the real executive power is vested in the council of Ministers headed by the Prime Minister. The best examples for the Parliamentary form of Government are India and United Kingdom. The President in India or the Crown (King/Queen, who is the hereditary monarch) is the nominal constitutional head.

Similarly at State level, the Governors are the nominal constitutional heads since the real powers are vested in the Council of Ministers of the State concerned, headed by the respective Chief Ministers.

In India the executive comprises of the Council of Ministers under the leadership of the Prime Minister headed by the President of India. The Union Executive of India Comprises of (1) The President, (2) Vice President (3) Council of Ministers headed by the Prime Minister and 4) Attorney General of India (Article 51 to 78 and Article 123 of the Indian Constitution).

With regard to law making, any proposal to make a law, to codify an uncodified branch of law (E.g. the law of Contracts

is codified as the Indian Contract Act, 1872, similarly the Indian Evidence Act, 1872, The Indian Penal Code, 1860, the Transfer of Property Act, 1882, etc. however some branches of law are not codified E.g. the law of Torts, Administrative Law, Environmental Law etc.) has to be initiated/proposed by the executive by placing a bill to that effect before the houses of the Parliament, the central /union Legislature (Lok Sabha and Rajya Sabha in India), the Supreme Law making authority.

In India, the highest law making authority or supreme legislature is the Parliament; which is also known as Central Legislature. It consists of the Lok Sabha (or House of the People), Rajya Sabha (or the Council of States) and the President of India (Article 79 to 122 of the Indian Constitution). Further, Article 368 of the Indian Constitution confer on the Parliament, enormous power to amend the Constitution subject to the condition, the basic structure/feature of the Constitution should not be curtailed. A bill proposing law is tabled first before the Lok Sabha. Some bills are passed by simple majority, some bills need special majority and some others require special majority and also ratification by the legislatures of the States concerned, in case the interests of two or more states is involved in the bill. When the bill is passed/approved by both houses of the Parliament, it is sent to the President for assent. Then the executive, after getting the assent of the President, publishes the bill in the official gazette, which comes into force as an Act w.e.f. the date/dates specified therein.

The primary function of the Courts/Judiciary is to interpret the law passed by the legislature keeping in view, the intention, object and will of the legislature and also in strict adherence to the principles of justice, equity, custom (customary practice) etc. to deliver pure and impartial justice.

In India, the administration of justice is vested in the union Judiciary headed by the Supreme Court of India (Articles 124 to 147 of the Indian Constitution). The judiciary, while interpreting law, has to take into consideration various factors which the present subject deals with.

As stated above, the authorities of law making namely, the Executive, legislature and Judiciary are the three organs of the Governmental machinery and in brief, the main functionaries of the Government vested with the distinct

functions viz. executive functions / powers, legislative powers /functions and the judiciary powers / functions. Montesquieu, a French jurist coined the principle/doctrine of "Separation of Powers". According to this doctrine, the three organs of the Government should discharge their respective functions only without intervening /encroaching upon the functions of the other. In other words, the Executive should discharge executive functions only and should not encroach upon the legislative or judicial functions. Similarly, the legislative and Judiciary should not intervene in other functions. However, strict compliance/adherence to the principle of separation is not only impracticable but also impossible. Hence, this principle was not followed in U.K. But, it was adopted in U.S.A., but failed. In India, it is partly followed. In India, the executive functions are vested in the Executive, legislative functions are vested in the legislature and the judicial functions are vested in the judiciary. However, the executive exercises judicial power, at the time of the appointment of judges of the High Courts and Supreme Court. Similarly, the legislature (Parliament) encroaches upon judiciary by initiating impeachment move to dismiss the judge of the High Court or Supreme Court. Therefore, Friedman, an eminent jurist said that "strict compliance of the doctrine of separation of powers is not only a theoretical absurdity, but also a practical impossibility". Thus, it can be said that the three organs of the Government namely the Executive, Legislature and Judiciary are not independently independent, but inter – dependently independent and hence, the principle is not followed in England, followed but failed in U.S.A. and partly followed in India.

Laws made as stated above are designed for application and interpretation in the courts of justice. The purpose of any law, formulated by the legislature is to regulate and correct human conduct from wrong doing and to establish peace and security in the state. The power of making law/legislation is vested in the parliament, which is also known as the central legislature. The Supreme legislature, the Parliament under the power of delegated legislation may delegate the authority of law making to the subordinate legislatures *i.e.* State/ Provincial legislatures and other subordinate bodies subject to the condition that the law so passed by the subordinate legislature/ body under the power of delegated legislation must

not be inconsistent with the provision/provisions of the constitution, the Supreme law of the land. If so, the courts, while interpreting the law, declare it as unconstitutional and void.

However, the Courts cannot interpret a statute in a way, in which they have developed the common law (Common Law means judge made law or laws made basing on the principles evolved by judges during judicial pronouncements in England). Therefore, the judges, while applying and interpreting the statutes have to be conscious that, in the end, the statute is the master and not the servant of the judgment (DEVLIN, the judge, P-14) and that "no judge has a choice between implementing the law and disobeying it" (GLEESSON, C.J. of the High Court of Australia in a speech made to the Australian Bar Association Conference in New York (2000) 74 ALJ 494 (Aust.). Further, the C.J. said that the judges have more freedom in interpreting the constitution. However, this freedom is subject to permissible limits.

The rules of interpretation are not the rules of law and are not to be applied like the rules enacted by the legislature in an Interpretation Act as laid down in *Super Intendant and Remembrancer of Legal Affairs vs. Corporation of Calcutta,* (AIR 1967 SC 997 pp – 1003 & 1007) in which the supreme court struck down the old rule that "a statute does not bind the state, unless it is expressly named or brought in by necessary implication." The court upheld the validity of the new rule that a general Act applies to citizens and the State as well, unless the Act expressly or by necessary implication exempts the state from its operation.

2. State : (Meaning, Definition and Elements)

Meaning :--The term 'state' is derived from the Latin word 'Status' which means 'standing' *i.e.* the position of a person or a body of persons. It is the main source for the emergence of any branch of law. It is a political society and is one of the most important legal institutions.

Definition :--The term 'state' has been defined in different ways by several jurists and political thinkers. A few of them are stated below :--

(1) Salmond :--Sir John Salmond defines 'state' as "an association of human beings established for the attainment of

certain ends by certain means, the ends beings defence against external enemies and the maintenance of peaceable and orderly relations within the community itself."

(2) Holland : --According to Professor Holland, a 'state' is a numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority, or of an ascertainable class of persons is, by the strength of such a majority, or class, made to prevail against any of their number who oppose it." This definition of Holland is not complete one as it does not specify the objectives of the state.

(3) Chalmers :--According to Chalmers, "A state is an independent political society occupying a definite territory or territories, the members of which are united together for the purpose of resisting external force and the preservation of internal order."

(4) Oppenheim :--According to Oppenheim, "A state proper is in existence when a people is settled in a country under its own sovereign government."

Elements :--To constitute a State, the following conditions/ requisitions are to be satisfied –

(1) People or Population

(2) Definite Territory

(3) Government and

(4) Sovereignty

(1) People or Population :--To constitute a state, there must exist population consisting of people (As it is rightly said by Late Shri. Gurajada Appa Raoji, a veteran social reformer that the country or State does not mean a territory of soil, but of people) on a particular territory, comprising of land and waters. The state confers on people " the status of citizenship" thereby provides certain rights, civil and political irrespective of sex, race, religion, caste, etc.

(2) Definite Territory :--To constitute a state, there must be a definite territory. Territory is a part of the earth, comprising of land, waters (rivers and sea), which includes internal waters and territorial waters up to permissible limits, gulfs, bays, streams, air, outer space etc. The territory of a

State may be large or small. For instance, the territories of some countries/states are large. *E.g.* U.S.A. China, etc. However, the territories of some other countries/states are small *e.g.* Sri Lanka, Kuwait etc.

(3) Government :--A politically organized human machinery is called the "Government". To constitute state there must exist a Government, which won the will of the people and able to control the people. There are three organs in a governmental machinery viz. the Executive, Legislature and Judiciary to administer and control the people.

(4) Sovereignty :--Sovereignty is nucleous for the independence and supremacy of a state. The term 'Sovereignty' is derived from the French word 'Souverain' and the Latin word 'Superanus', which means "an authority, which had no other power above itself". In other words, it means "the supreme power or authority, which is absolutely free from external control and getting habitual obedience from the people within its territory."

3. Law : (Meaning, definition and features)

Meaning :--Law is an instrument, which regulates human conduct and thereby minimizes/reduces/eradicates the menace of wrong doing by individuals in the society. The state with the help of law, through the administration of justice maintains law and order and establishes peace in the society. It is a rule of human conduct imposed and enforced by the state.

The term 'law' denotes different kinds of rules and principles and is used in different senses, as stated below –

I. Law means justice, morality, reason, order, righteousness etc. from the point of view of society.

II. Law means statutes, acts, rules, regulations, orders, ordinances etc. from the point of view of legislature.

III. Law means rules of court, decrees, judgements, orders of the decree holders.

IV. Law means rights and remedies from the point of view of the decree holders.

V. Law means duties, liabilities, obligations etc. from the point of view of the judgement-debtor, and

VI. Law means titles, written laws, judicial precedents, and custom as evidence of law.

According to Austin, an eminent jurist, "Law is a rule laid down for the guidance of a being by an intelligent being having power over him."

Definition :--It is very difficult to define the term 'Law'. Several attempts were made by the jurists to define the term 'Law' some of them are stated below –

(1) Salmond :--According to Salmond, " an eminent and well known jurist 'law may be defined as the body of the principles recognized and applied the state in the administration of justice." In other words, the law consists of the rules recognized and acted on by the courts of justice.

(2) Austin :--According to Austin, "a law is a command which obliges a person or persons to a course of conduct."

(3) Holland :--He says that, "Law is a general rule of external human action enforced by a political sovereign."

(4) Erskine :--According to Erskine, "Law is the command of sovereign, containing a common rule of life for his subjects and obliging them to obedience."

(5) Pound :--Pound defines law as, "Law is the body of principles recognized or enforced by public and regular tribunals in the administration of justice."

Features of Law :--Following are the salient features of the law :--

(1) The laws are made in the form of 'Rules' and 'Acts'

(2) The laws are made by the legislature and issued by the sovereign authority.

(3) The laws forbid certain types of actions, which are harmful.

(4) The laws prescribe penalty or punishment for breaking them.

(5) The laws conform to rights and create obligations in specific relations.

(6) The laws have to be obeyed not as optional but as obligation; and

(7) Courts interpret the laws and fix the punishments to the offenders and compensation to the victims according to the law.

A Law (Lex) and the Law (Jus) :--The term law is used in two senses namely concrete and abstract. The former *i.e.* 'a law' implies a law in a particular or a special law. (*e.g.* Dowry Prohibition Act 1961), whereas the latter *i.e.* 'The Law' implies the law in general or general law. (*e.g.* the Indian Penal Code, 1860). In abstract sense it *i.e.* 'a law' means 'the principles of justice." In concrete sense it *i.e.* "the law" means "the rules of law". Therefore, Salmond, an eminent and well known jurist says - law in abstract sense *i.e.* 'a law' is called 'just' or principle of justice and the law in concrete sense *i.e.* 'the law' is called 'Lex" or the rules of law.

Law and Ethics :--

Ethics :--the word 'Ethics' means "a science of morals, or it is that branch of philosophy, which is only concerned with human character and conduct; and so it is purely a moral science." In simple words, ethics means the science of morals rules of conduct. Ethics examine human conduct and lays down rules of duty and ideal conduct dealing with the values of life.

Ethics is defined as "that branch of philosophy dealing with values relating to human conduct, with respect to rightness and wrongness of certain actions and to the goodness and badness of the motives and ends of such actions."

With regard to the relation between the law and Ethics, law is an instrument that regulates human conduct and thereby ensures peace and security in the society, while ethics examines such human conduct and lays down/ imposes the rules of duty and ideal conduct. Law and ethics are interrelated since law is based on the principles of ethics. Similarly, ethics depends on law for enforcement of some of its principles. Finally, the rules of law are obligatory and binding, while the principles of ethics are not obligatory and binding.

4. Source of Law

(i) Meaning and Definition :--The word 'Source' literally means "rising form the ground" or "the origin or the

spring". In other words, 'Source' means "basis from which law is evolved." Whereas the expression 'source of law' is basis, which enables the courts to interpret law."

Keeton, a well known jurist defines source as, "the material out of which law is eventually fashioned through the activity of judges".

(ii) Kind of sources :--The sources of law may be categorized into a) sources of law in General and b) Sources of law in particular (*i.e.* sources of Hindu Law, sources of International Law etc.) . The sources of law in general are classified into--

(1) Formal sources and

(2) Material sources

(1) Formal sources :--Formal Source is that source, which confers authority for enforcement of law.

(2) Material sources :--Material Source is that source, which provides material or content to a principle of law. The material sources are divided into two kinds namely–

(i) Historical Sources :--It is the source which expresses the history or evolution for the principle of law and the circumstances though which it attained the form of law.

(ii) Legal Source :--It is that source through which it gets its authority and binding force. It is the gate through which it must pass before it becomes a binding rule of law.

The legal sources are sub-divided into

(i) Legislation :--Among all sources of law, legislation is the most patent and sovereign source of law making. It is a rule or body of rules passed by the legislature, which is the law making body / authority of a state. It is an Act or enactment passed for the purpose of regulating human conduct/ behaviour.

Definition :--The term 'Legislation' has been defined by various writers in different ways. Some of them are detailed below :--

(a) Salmond :--According to Salmond, "Legislation is that source of law, which consists in the declaration of legal rules by a competent authority."

(b) Prof. Gray :--Prof. Gray defined legislation as nothing but 'the formal utterances of the legislative organs of the society'. This definition of Prof. Gray is more purposive and explicit than that of Salmond. It is preferred on the ground that 'formal utterances' and 'legislative organs' lay apparent stress on the difference between legislation and other sources of law.

(c) Holland :--According to Holland, "the making of general orders by our judges is as true legislation as is carried on by the Crown." But we confine ourselves to the use of the term legislation in the sense in which it is commonly understood.

Kinds of Legislation

(i) Supreme Legislation :--It is a legislation made by such body, that, it cannot be controlled by any other body. It is made by the sovereign power of the state directly. Eg. Law made by the parliament.

(ii) Subordinate Legislation :--It is the legislation made by an authority/legislature subordinate to the Parliament (the Central/Supreme Legislature) under delegated power. In other words, subordinate legislation is the legislation made by the authority other than the supreme authority in the state in the exercise of the power delegated to it by the supreme authority. The subordinate legislation is dependent on some superior or supreme authority for its continued existence and validity.

(1) Kinds of Subordinate Legislation

Salmond classified subordinate legislation into five kinds as follows--

(i) Municipal Legislation :--The municipal authorities are given limited powers to enact laws for their governance. It is called Municipal Legislation. They are also called 'by laws'.

(ii) Executive Legislation :--This type of legislation is made by executive authority. The parliament delegates certain legislative powers to executive. *E.g.* The Defence of India Act

(iii) Colonial Legislation :--The colonies of British Empire were delegated with certain legislative authority for their own Government. Such

legislation is called Colonial Legislation. E.g. Laws passed by the Indian Legislature before Independence.

(iv) Autonomous Legislation :--It is the legislation passed by the autonomous bodies. E.g. Universities, Corporations etc.

v) Judicial Legislation :--Judiciary is given powers to make certain rules to regulate the procedure. Such act of court during judicial proceeding is called judicial legislation.

(2) Custom :--The term 'Custom' means, "Achara or usage or traditionally followed long practice by the members of a society".

Manu recognized custom to be transcendent law. Hindu Philosophy enunciates that "Achara Paramodhara". It is a good source to interpret law in the administration of justice. The Privy Council in *Collector of Modhura vs. Mootoo Ranalinga Setherpothy,* (1868, 12 M.L.A. 397) also has recognized 'custom' as the supreme authority in Hindu Law.

Custom may be defined by several jurists. A few of them are stated below:

According to Austin, "Custom is a rule of conduct which is governed and observed spontaneously and in pursuance of law set by a political superior."

Allen defines custom as, 'a legal and social phenomenon grows up by forces inherent in society, forces partly of reason and necessity and partly of suggestion and imitation.'

Salmond says, "Custom is the embodiment of those principles, which have commanded themselves to the national conscience as principles of justice and public utility."

(3) Precedent (or Judicial Precedent) :--The term 'Precedent' literally means "a rule followed or a principle applied previously by a competent authority under similar facts and circumstances." According to Oxford Dictionary, the term 'precedent' means "a previous instanced or case, which is or may be taken as an example of rule for subsequent cases." Precedents, which are enforceable by law are called "Judicial Precedents". When a judgment or decision of a court of law is

cited as an authority to support a case in trial under similar facts and circumstances, it is called judicial precedent.

The definitions of Judicial Precedent by some jurists are stated below :--

(i) **Bentham** :--According to Bentham, 'precedents are judge made laws.'

(ii) **Keeton** :--According to Keeton, a judicial precedent is a judicial decision to which authority has in some measure been attached.

(iii) **Gray** :--In the words of Gray, "a precedent covers everything said or done which furnished a rule for subsequent Mandatory, Imperative or Obligatory Statute and practice."

(iv) **Jenks** :--According to Jenks, a judicial precedent is a decision by a competent court of justice upon a disputed point of law becomes not merely a guide but an authority to be followed by all courts of inferior jurisdiction administering the same system until it has been overruled by superior court of justice or by a statute.

LECTURE II

STATUTE

(Meaning, Definition And Classification)

This lecture covers the following heads –

1. Statute
   - (a) Meaning
   - (b) Definition
   - (c) Intention and objects of Statute
   - (d) Statute and Enactment
   - (e) Commencement
2. Classification of Statues
   - (i) With reference t duration:
     - (a) Temporary Statute and
     - (b) Permanent or Perpectual Statute
   - (ii) With reference to method :
     - (a) Mandatory, Imperative or Obligatory Statute and
     - (b) Directory or Permissive Statute
   - (iii) With reference to object: -
     - (a) Codifying Statute
     - (b) Consolidating Statute
     - (c) Declaratory Statute
     - (d) Remedial Statute
     - (e) Enabling Statute
     - (f) Disabling Statute
     - (g) Penal Statute
     - (h) Taxing Statute
     - (i) Explanatory Statute

(j) Amending Statute

(k) Repealing Statute

(l) Curative Statute

(iv) With reference to the extent and application:

(a) Public Statute And

(b) Private Statute

* * * * *

1. Meaning :--The term 'Statute' signifies an Act of legislature. It is the formal expression of the legislature in writing as the representative of the people of a country/nation/ State.

Lord. Blackburn says that, a statute has several meanings. It may mean what is popularly called as an Act of Parliament or a code, or all the Acts passed in one session. It is a written law district from a customary law. It is an instruction to administrators and courts to accomplish a definite result. In England, the term, 'Statute' is now synonymous with an Act of Parliament comprising of the King, house of Commons and House of Lords.

During British period (1600-1950 A.D.) Statutes were made in the form of charters. For instance, East India Company was established under the charter of 1600 issued by the Crown, Queen Elizabeth – I on 31st December 1600. Similarly, many characters were issued for the establishment of Mayor Courts, Supreme Courts etc. According to Bouvier's Law dictionary, a statute, "is a law established by the act of the legislative power, that is to say an act of the legislature."

2. Definition :--The term 'Statute' has been defined by various jurists. A few of them are showed below: -

(i) Crawford :--Crawford defines statute as, "an Act of the legislature as an organized body: A written will of the legislature expressed according to the form necessary to constitute it a law of the state and rendered authentic by certain prescribed forms and solemnities : a Act of legislature declaring, commanding or prohibiting something written" (In simple words, a statute, is an instrument in writing

encompassing the will of the state, passed by the legislature declaring, commanding or prohibiting something)

(ii) C. K. Alien :--According to him, "A statute is the highest constitutional formulation of law, the means by which the Supreme legislature, after the fullest deliberation, expresses its final will."

(iii) Maxwell, (in his, "Interpretation of statutes 12th Edn p-1) defines 'Statute' as "the will of the legislature and this definition remains sufficient provided that it is understood that the will of the legislature must be expressed either by the agreement of the Queen (Crown in England = Heriditory monarch, King/Queen), Lords (House of Lords) and Commons house (house of commons) or by the Queen and commons accordance with the Parliament Acts of 1911 and 1949. By these parliament Acts, the need for consent of the Lords to certain Bill has been displayed with?

(iv) Southerland :--Southerland (in his 'Statutes and Statutory Construction', 3rd edition Vol. – I, p - 3), "A statute in fact is an instrument of modern societies, expressing a relationship between the individual and the State." It is not however a relationship taking the form of a command merely between the superior and subordinate. It is now, being increasingly realized that for the smooth working of the Governmental machinery, there should always be a harmony (balance) between legislative enactment and the dominant trend of public opinion. As Southern land puts it. "a statute is merely a structural device through which the determined principle set for the by the legislature is prescribed for the regulation of private conduct and for the limitation of Governmental activity."

The terms statute and statute law are used interchangeably. The constitution of India does not use the term "statute." It employs the term law often to describe an extortion of legislative power. Law is defined so as to include any ordinance order, bye-law, rule, regulation, notification etc. (B. M. Gandhi's "Interpretation of Statute, second Edn. 2014, p – 1"). An Indian Statute is an Act of the control legislature (supreme legislature/Parliament) or of a state (Provincial) legislature or other subordinate body (under delegated legislation). A statute may contain the namely, (i) Short title

(ii) Long Title, (iii) Preamble, (iv) Marginal Notes (v) Headings of a group of sections or Individual sections (vi) Definitions of interpretation clauses, (vii) Provisions, (viii) Illustration (ix) exception and saving clauses, (x) Explanations, (xi) schedules (xii) punctuations etc.

(2) Intention and objects of a statute :--The main function of courts/ judiciary is to interpret a statute that comes before it to resolve the dispute or a conflicting issue/question. So the judiciary, while interpreting a statute passed by the legislature shall keep in view the intention, object and will of the legislature in making the statute, by referring, if necessary the internal and external aids of the statute namely statement of objects and reason, preamble, titles, schedules, dictionaries, translations, bill, reference of other statutes etc. otherwise, the judges differ in their opinion.

(3) Statute and Enactment :--According to Halsbury Laws of England (3rd Edn. Vol. 36, Simonds Edn. P-361), a statute or Act of Parliament is a pronouncement by the Sovereign in Parliament, that is to say, made by the Queen (Crown = King/Queen) by and with the advice and consent of both houses of Parliament, or in certain circumstances, the house of commons alone. (Similarly, in India, approval of Lok Sabha (House of People) alone is enough in respect of money bills). All statutes are properly referred to as enactments. Enactment may equally be used to describe a particular provision in a statute.

(4) Commencement :--Commencement of an Act taken place after its approval by the both houses of the Parliament/ legislature, Presidential assent and gazette notification by the Central Government . The date or dates of commencement of Act as a whole or partially is controlled/finished in the Act itself. In other words, the whole Act may come into force on the same/one day. In certain cases, different provisions of the Act come into force on different dates and also for different areas within the state.

2. Classification of Statutes

Statutes made by the legislative are for different purposes and different situations depending upon its nature, purpose, situation etc.; statutes may be classified as follows :--

(i) with reference to duration

(a) Temporary Statute And

(b) Permanent or Perpectual Statute

(ii) with reference to method

(a) Mandatory, Imperative or Obligatory Statute And

(b) Directory or Permissive Statute

(iii) with reference to object

(a) Codifying Statute

(b) Consolidating Statute

(c) Declaratory Statute

(d) Remedial Statute

(e) Enabling Statute

(f) Disabling Statute

(g) Penal Statute

(h) Taxing Statute

(i) Explanatory Statute

(j) Amending Statute

(k) Repealing Statute And

(l) Curative Statute Or Validating Statute

(iv) With reference to the extent and application

(a) Public Statute And

(b) Private Statute

(v) Principles of Natural Justice

(i) Classification on the basis of duration :--Basing on duration of its operation or period of its validity, a statute may be classified into two heads, namely

(a) Temporary Statute :--It is passed for a particular or specific purpose for a limited or short period. The period of its operation and validity is furnished in the Act itself. It's term may be extended or reduced by a subsequent Act of extension or repealing Act reducing it's term. For instance, the Finance Act is a

temporary Act for a period of one year and it is to be passed every year.

(b) **Permanent or Perpectual statute** :--A permanent or perpectual statute is one in respect of which the expiry or validity of its operation is fixed. It continues to be in operation/ force until and unless it is repealed or replaced by a new Act/Statute. Most of the statutes are made on permanent basis for an indefinite period. A single provision or some of the provisions provisions (viz. Part or Parts, Section/Article or Sections/Articles, sub-sections/clauses or sub-clauses schedule/ schedules etc.). may be omitted or deleted or new provisions may be substituted or added by the subsequent Amendment Acts passed by the legislature. But, it will remain in force/ operation till it is repealed by the legislature or replaced by passing of a new Act. For instance, the Companies Act, 1956 has been repealed and replaced by the new Act, *i.e.* the Companies Act, 2013.

Further, there are several Acts passed in 19th century, which are still in operation. *Eg.* The Indian Contract Act, 1872. The Indian Evidence Act, 1872; The Transfer of Property Act, 1882 etc.

(ii) Classification on the basis of Mode or Method :- It is of two categories namely :--

(a) **Mandatory, imperative or Obligatory statute** :--A mandatory statute is one, which compels performance of certain things in a prescribed manners/mode as mandatory/compulsory. In simple words, a mandatory statute compels or insists to do certain things in a prescribed manner and strict compliance there do is mandatory.

(b) **Directory or permissive statute** :--It directs or permits a thing to be done but will not compel its performance. In case, certain conditions are prescribed as essential for validity of the statute

or a thing regulated by it, non – fulfilment of the conditions will not affect its validity. Such prescriptions or conditions are treated as merely directory.

(iii) Classification with reference to object :--There must be an intention or object behind the formulation or any statute. Depending upon the nature of object, statutes, may be classified as follows: -

(a) Codifying statute
(b) Consolidating statute
(c) Declaratory statute
(d) Remedial statute
(e) Enabling statute
(f) Disabling statute
(g) Penal statute
(h) Taxing statute
(i) Explanatory statute
(j) Amending statute
(k) Repealing statute
(l) Curative or validating statute

(a) Codifying Statute :--Codification is a process by which the principles of law are transformed into a written and systematically arranged code. (some branches of law are codified. *E.g.* The Indian Penal Code, 1860, The Indian Contract Act, 1872, the Transfer of Property Act, 1882). However, some branches of law are still remain uncodified. (Eg. Law of Torts, Environmental Law, Administrative Law). A codified statute is one which codifies a particular branch of law. It states exhaustively the whole of the law on a particular/specific subject incorporating pre-existing statutory provisions and also common law rules. For example, the law relating to Bills of Exchange, cheques, promissory notes, etc. in England is codified as the Bills of Exchange Act in England. Similarly to regulate the law relating to contracts is codified in India as the Indian Contract Act, 1872. Likewise, to regulate the law relating to interstate succession among Hindus is codified as the Hindu Succession Act, 1956.

(b) Consolidating Statute :--Where there are two or more Acts on a particular subject, the provisions of such Acts are comprehensively consolidated and replaced by a subsequent Act, is called a consolidating statute. In other words, a consolidating state is one, which collects statutory enactments on a particular subject and consolidates them (gives shape of all of them into one) in to one Act/Statute, with certain changes/modifications if necessary. There are several consolidating Acts/ Statutes passed since 19th century *i.e.* since the constitution of First law commission in 1834. For instance, the Code of Criminal Procedure 1898 and subsequent Acts of Criminal procedure. Similarly, in England, the Law of Property Act, 1925 is a consolidating statute, which consolidated the Acts of 1922 and 1924 relating to the law of Property. The purpose of a consolidating statute is have only one statute in detail on a particular subject. For the purpose, it replaces the earlier, preceding /Acts by repealing them. A consolidating statute/Act can be sub–divided into three categories namely a) Pure consolidation or re-enactment, (b) Consolidation with correction and minor improvements and (c) Consolidation with amendments by the Law Commission.

(c) Declaratory Statute :--When a law passed by the legislature acquires the shape of statute, then it goes into the hands of judiciary/courts for its interpretation. The judiciary (courts/judges), while interpreting a particular statute may come across certain doubts either in common law or statutory law. Passing of a declaratory statute is necessary to understand clearly certain expressions in common law or statutory law to clarify such doubts and to avoid confusion/ misunderstanding. A declaratory statute contains a preamble and also the word 'declared' as well as the word 'enacted' (The Central Bank of India and their Workment AIR 1960 SC 12) A declaratory Act/ Statute will have retrospective effect. Further pending matter on appeal will be decided on the basic of the declaratory Act. However, the matters, which have already been decided will not be reopened (*i.e.* not applicable to decided matter). The best examples of declaratory statutes are namely (i) The Territorial Waters Jurisdiction Act, 1878. The Fishwater Fisheries Act, 1886 etc. in England. In India, The Income Tax (Amendment) Act, 1985. Which added/inserted explanation 2 to section 40 of the Income Tax Act, 1961 and the Finance Act, 1987 amending the definition of "Owner of house property" in section 27 are the best examples of the declaratory Acts.

(d) Remedial Statute :--A remedial Statute, as the name itself contains is to confer/provide a new remedy or favour so as to protect one's interest or rights. The purpose of the remedial statute is to protect an individual from the wrongs and defects of an existing law, welfare, legislations in particular. In remedial Acts/Statutes, the words "for remedy whereof" have been used immediately before the language of the enactment. The best examples of the remedial statutes are namely, (i) the Maternity Benefits Act, 1961, (ii) The Workment's Compensation Act, 1923. etc.

(e) Enabling Statutes :--In England, the judges, while deciding a particular case evolve, certain principles of law, which are known as 'Common Law'. Some times, the common law so made is narrow and found to be unlawful. An enabling statutes enables to enlarge such common law so as to make a particular thing lawful, which would not be otherwise lawful. In other words, such narrow common law gets enlarged and is made lawful with the help of the enabling statute. Sections 49A(1) and 49A(2) of the Advocates Act, 1961 as amended by Act 21 of 1964 is an illustration of an enabling statute.

(f) Disabling Statute :--Common law, statute law, custom/customary law etc. are different sources of law, which the judges apply, while deciding a case. Some times customary law preveirls over a statute law (for instance, according to section 5, Hindu Marriage Act, 1955, a man cannot marry his sister's daughter, unless their custom or usage permits and hence such marriage is not valid/void. If the custom (customary law) permits as in South India, such marriage is valid/not void. Here, custom is given priority over statute.) Therefore, a disabling statute is one, which disables/prevents/restricts/cuts down/removes a right, which is found not lawful/feasible. In simple words, a disabling statute is one, which restrains the enforcement of rights conferred by a common law.

(g) Penal Statute :--Every individual in the state must respect and obey the law of the land. Disobedience of law amounts to wrong. So, the disobedience of law has to be curbed so as to enforce the obedience of Law by the state with the help of Penal Statute. A penal statute is one, which curbs the menace of wrongs, specifically public wrongs (known as crimes/offences) by the command of Law, by awarding

punishments, fines, forfeiture of property, imprisonment, simple or rigorous, death penalty etc. In simple words, a penal statute is one, which enforces the obedience of the law of the land by the people/individuals, by the command of law, not by individual action by awarding punishments viz. fine, imprisonment, death sentence etc. The Penal Statute may be in form of a code containing various sections categorised under different parts defining various offences and prescribing punishment for the respective offences. For example, the Indian Penal Code 1860. Further, the Penal Statute may be in form of a comprehensive criminal code. For example, the prevention of Food Adulteration Act, 1954, the Arms Act, 1959, etc.

(h) Taxing Statute :--The Government has to provide various amenities to the public viz. health, education, transport etc. To meet the expenditure, the Government should have some source of income. The main source of income/revenue, is collection of various taxes namely, income tax, sales tax, wealth tax, gifts tax etc. An act, which is designed to impose tax on different sources of income is called "Taxing Statute". *e.g.* The Income Tax Act, 1961.

(i) Explanatory Statute :--Judges, while interpreting a particular statute may find it difficult to follow the meaning and purpose of certain expressions used in the statute due to apparent omission and ambiguity and hence the judiciary cannot come to a conclusion, while deciding a cause. Therefore, in order to remove the ambiguity and to make it clear the meanings and purpose of the expressions used in the statute, one more Act/ Statute is passed for the purpose of explaining the ambiguous words/expressions used in the earlier statute. The Royal Mines Act, 1963, which was passed to explain the ambiguous expressions used in the earlier statute. The Royal Mines Act, 1988 in England is an example of the explanatory statute.

(j) Amending Statute :--As the time passed, we witness so many changes in social, economic, political, cultural and so on. Most of the Acts/Statutes were passed in 19th century and 20th century. At that time the Acts/statutes were passed by keeping in view, the socio economic conditions prevailing in those days. Therefore, it is necessary and incompatible bring about appropriate/necessary changes by passing fresh Acts/statutes called Amendment Acts/Amending

statutes. For instance, one hundred Amendment Acts have been passed. Similarly, in Indian Constitution, the Companies Act, 1956 has been amended for 25 times and a new Act entitled "The Companies Act, 2013" has been passed repealing the old Act, *i.e.* the Companies Act, 1956. Likewise, almost all the Acts have been changed from time to time by passing of the Amendment Acts, known as " Amending Statutes "Some examples of the Amendment Acts are, The Constitution (100th Amendment) Act, 2015, the Companies (Amendment) Act, 2002, the Taxation Law (Amendment) Act 1984, the Criminal Law (Amendment) Act, 1983, etc.

(k) Repealing statute :--A repealing statute is one, which repeals or replaces an earlier statutes. Old statutes, which were passed long back get changed/amended from time to time by subsequent Amendment Acts. Consequently, some of the provisions in the old statute are omitted and some other new provisions are inserted leading to confusion and hence, the old Act/Statute is to repealed and a new statute is to be replaced/substituted in its place. Such new statute, which repeals and replaces the old statute is called "Repealing Statute". For instance, the Code of Criminal Procedure, 1898 is repealed and replaced by the Code of Criminal Procedure, 1973. Similarly, the Companies Act, 1956 has been repealed and replaced by the Companies Act, 2013. So, the Code of Criminal Procedure, 1973 and the Companies Act, 2013 are the "Repealing Statutes".

(l) Curative or Validating or Declaratory or Explanatory Statute :--The very expression makes it clear, that, the purpose of this statute is to validate the defects in the previous/earlier law passed. Instead of making an amendment to remove the defects, separate legislation is passed. In other words, the purpose of a validating statute is to remove the cases of ineffectiveness or invalidity of actions or proceedings, which are validated by a legislative measure. A validating legislation normally contains the expression not withstanding any judgement, decree or order of any Court.

According to Craies, a declaratory statute is, "an Act to remove doubts existing as to the Common Law, or the meaning or effect of any statute". Crawford observes that, the paramount purpose of a declaratory statute is to remove doubts as to the meaning of existing law and to correct a construction considered erroneous by the legislature.

(IV) Classification with reference to the extent of Application :--On the basis of its application, statutes are divided into two classes namely –

(a) Public Statute and

(b) Private Statute

(a) Public Statute :--A Public Statute is one, which relates to a matter of public policy. Such statute may be general, local or personal in nature. In England, public Acts/ Statutes are not required to be proved in a Court of Law. According to the Interpretation Act, 1998, all statutes passed after 1850 are regarded as Public Statutes.

(b) Private Statute :--A private statute is one, which relates to affairs of some individuals or body, which is not of public concern. The origin of private Acts/seems to be in orders made by the Parliament upon petitions filed by individuals seeking relief for private grievance because there was no remedy for private grievances in Common Law. However, Section 9 of the Interpretation Act 1889, removed the difference between the Public Statute and Private Statute.

(V) Principles of Natural Justice :--Concept of Natural Justice otherwise Known as Fair play in Action is simple and elementary Justice distinct from technical justice. The horizon of the principles of Natural Justice had been well explained by the Apex Court in *A.K. Kraipak vs. Union of India,* AIR 1970 SC 150.

In *State of Orissa vs. Dr. Binapani Devi,* AIR 1967 SC 1269 it was held that even if an order is of administrative character involving civil consequences it must be made consistently with the Rules of Natural Justice.

LECTURE - III

ELEMENTS OR PARTS OF STATUTE OR AIDS IN CONSTRUCTION OF STATUTES OR INTERNAL AND EXTERNAL AIDS TO INTERPRETATION

This lecture deals with the following heads –

(1) Aids : Meaning :--The expression 'Aids' means instruments or tools of assistance to carry out a particular thing done or an activity performed or obtained or explained". In other words, aids means instruments or tools of assistance by which something is done, obtained or explained. As far as the construction or interpretation of statutes is concerned, aid help or assist in explaining the meaning of a particular word, expression or a phrase.

The aids or tools are classified into two heads namely –

1. Internal Aids and
2. External Aids or Extrinsie or Extraneous Sources of Aids

1. INTERNAL AIDS

The internal aids of a statute can be explained with reference to the following heads –

(i) Title

(a) Short Title and

(b) Long Title

(ii) Preamble

(iii) Headings

(iv) Marginal notes

(v) Definition or Interpretation Clause

(vi) Punctuations and Brackets

(vii) Illustrations

(viii) Provisions

(ix) Exceptions and saving clauses

(x) Explanation

(xi) Saving clauses

(xii) Schedules and

(xiii) Schedules Forms

(i) Title :--The very important part of a statute is, its title, without which there can be neither identity not existence of any statute. Almost, all modern statutes have two kinds of titles namely short title and long title as detailed below :--

(a) Short Title :--The short title of a modern statute is generally found in a section near the end of the Act. Short Title is a name given to a statute for the purpose of reference. It identifies the statute/Act, and ends with the year in which it is passed. Eg. the Indian Contract Act, 1872, the Indian Evidence Act, 1872, the Indian Penal Code, 1860 etc.

According to Lord Moulton, the short title is "a stationary nickname to obviate the necessity of always referring to the Act under its full and descriptive title."

Generally in almost all modern Acts/Statutes Section, clause (1) of the chapter I contains the short title. For example, Section 1(1) of the Indian Evidence Act, 1872 provides that the short title starting "The Act may be called the Indian Evidence Act, 1872 (Act of 1872). The purpose of short title is to reduce the space required for writing long title of a statute, economy in expression and convenience." Section 28 of the General Clauses Act, 1897 enacts/envisages that "an Act or Regulation may be cited by reference to the title or short title, if any. Section 28 further makes it clear that citation by short title is without prejudice to any other mode of citation."

(b) Long Title :--Long Title of a Statute appears at the head and it very often preceeds (before) the preamble of the Act. It contains in brief, the general description relating to object of the Act. The main object of the short title is to facilitate citation of Act in future enactments and other instruments. The long title of a Statute normally begins with the words," An Act to." For instance, the long title of the Code of Criminal Procedure, 1973 begins with "An Act to consolidate and amend the law relating to criminal procedure." Similarly, the long title of the Code of Civil Procedure, 1908 is "An Act to consolidate and amend the laws relating to the procedure of Courts of Civil Jurisdiction."

Long title of a statute is a part of the Act and admissible as an aid to the construction (*R. vs. Secretary of State for Foreign and Commonwealth Affairs,* 1994 All ER 457). In *R. vs. Batesand Russel,* (1952 2 All ER 842, 844) Donovan J, opined that "long title is a legitimate aid to the construction".

In *Kedarnath vs. State of West Bengal,* (AIR 1953 SC 404) the significance and connotation of the title of the Act was taken into consideration, while determining the validity of section 4 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

The Supreme Court in *Union of India vs. Elephinstone Spg. And Wvg. Co. Ltd.,* (AIR 2001 S.C. 724) held that the long title along with the preamble is a good guide to know the object, purpose and scope of the Act.

(ii) Preamble :--Preamble follows long title *i.e.* it appears next to the long title of a Statute/an Act enactment. It serves as preface to the Act. It contains clearly, the object for which the Act/Statute is passed/enacted justice Dyer in Sussex Peerage Case(1844 11 cc & Fin 85) affirmed that preamble is a key to open the minds of the makers/framers of the Statute/ Act and the mischiefs, which they intend to redress. Preamble helps in ascertaining the most appropriate meaning to the words/expression/language used in the enactment/Statute) in case the language used in the enactment contains more than one meaning. In other words, where meaning of enacted provision is not clear, preamble is to be looked into ascertain the intended meaning of the legislature. Preamble of Indian Penal Code, 1860 reads as follows – "whereas it is expedient to provide a general Penal Code for Indian; it is enacted as follows."

Preamble of a statute is a part of the Act and is accepted as an aid in constructing a provision.

In *Amit Das vs. State of Bihar,* (2005) SCC 488 : AIR 2000 SC 2264), the Supreme Court laid down that - "The preamble suggests what the Act was intended to deal with." The preamble must be read as a whole to ascertain, whether any provision in the enactment is clear or ambiguous.

(iii) Headings : Headings constitute an important part of the Act and affords key to the construction of sections that follow. In other words, heading is a short hand reference tool,

which provides a quick and brief idea about the contents of the general subject matter involved. There are two kinds of headings in a statute namely i) those, which are prefixed to a section and ii) those, which are prefixed to a group or set of sections. These headings serve as preamble to the respective Sections. Maxwell (in his Maxwell on Statute, XI Edn. p. p. 48 & 49) stated that "the headings prefixed to Sections or sets of sections in some modern statutes are regarded as preambles to those sections." Further, the headings may be in roman letters or in italic letters. If the heading is in roman letters, it is regarded as a part of the Act. If the heading is in italic letters, it indicates sub division of the part. They cannot control plain words, but explain ambiguous words of a statute and this view was quoted by *Shri Subba Rao, J in Binka vs. Charan Singh,* (AIR 1959 SC 960 P. 966) .

For instance, the heading before Sections 172 to 190 of the Indian Penal Code, 1860 is - "Of contempts of the lawful authority of public servants " and the heading before Section 498A of the Indian Penal Code is – " Of cruelly by husband or relatives of husband."

M/s. Frik India Ltd. vs. Union of India, (AIR 1990 SC 693) : In this case, the Supreme Court observed, "only in the case ambiguity or doubt, the heading or subheading may be referred to as an aid in construing the provision but even in such a case, it can not be used for cutting the wide application of the clear words used in the provision."

(iv) Marginal Notes :--Notes or headings or Captions, which appear at one side of a section of an Act is called marginal notes. In other words, Notes or headings, which are inserted at one side of a section in an Act are called, " Marginal Notes or Marginal Headings". Marginal note is a key to the mind of the legislature. It is also known as 'side notes'. It is a brief precise of the section and forms a more unsure guide to the construction of the enacting section. It gives safe indication of purport of a section even though the note does not control the meaning of the section. Marginal notes were inserted in the Act by the draftsmen, not by the legislators or not as per the instructions of the legislators.

Earlier marginal notes were considered to be useful as they were referred for the purpose of resolving ambiguity. But now, the majority view is the that the marginal notes cannot

be used for constructing the section (*Karnataka Rare Earth vs. Dept. of Mines & Geology,* (2004) 2. SCC 783 : AIR 2004 SC 2915)

It is now well settled that the Court is entitled to look at the headings given to a section, or a group of sections, in an Act to determine the meaning of doubtful words, but they (headings) cannot control the plain words of the Statues. They cannot be used to give a different effect to clear words in the Section. The golden rule is that when the words of a Statute are clear, plain and unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of the consequences. The duty of a Judge is to expound, and not to legislate. *Kamaluddin Ansari vs. Union of India,* AIR 1984 SC 29.

It is true that the marginal note to a section cannot be referred to for the purpose of construing the Section but it can certainly be relied upon as indicating the drift of the Section or, to show what the Section is dealing with. It cannot control the interpretation of the words of Section particularly when the language of the Section is clear and unambiguous but, being part of the Statute, it prima facie furnishes some due as to the meaning and purpose of the Section. *K.P. Varghese vs. Income Tax Officer, Ernakulam,* AIR 1981 SC 1922.

(v) Definition or Interpretation Clause :--Generally section 2 or 3 of any statute comprises of a definition or interpretation clause. It contains/provides for the definitions of some important words and concepts, which are very often used in the statute. The main object of the definitions clause is to avoid repetitions. The definitions embodied in the Statute are laid down by the legislature so as to make them binding in the courts of Law. The definition embodied in the statute itself serve as a dictionary to courts/judges to interpret the words used in the statute. Where a term or word or concept has been defined and embodied in the statute/enactment/Act, the court has to take into consideration, the definition, but not its ordinary meaning (*Angoori Devi vs. U. P. State,* 1964 A.L.J. 851).

(vi) Punctuations and Brackets :--According to Oxford Essential Dictionary, the word, 'Punctuation' means "system of arrangement of marks used to punctual (emphasize) a written passage". Punctuation is a minor element in a statute and hence punctuations and brackets are given little importance/weight in construction of a statute. Before 1850,

there was no punctuations in the manuscript of any Act/ Statute, which received Royal Assent.

Lord Hobhouse (in *Maharani of Burwan vs. Krishna Kamini Dasi*, ILR 14 Cal. 365 p. 372 (PC) stated, "it is an error to rely on punctuation in construction of a statute". In America, punctuation is a minor element, but not controlling element in interpretation of statute. Hence, the American courts disregard or repudiate it. However, if the statute in question is found to be carefully punctuated, it shall be resorted to for the purpose of construction of the statute. With regard to the statutes, in India *i.e.* the Acts of legislature and constitution of India are concerned, it was laid down by the Supreme Court in many cases that " punctuations in statutes should not be ignored (*Badirinarain vs. State*, AIR (1959) Raj 64)".

Sama Alana Abdulla vs. State of Gujarat, (AIR (1996) SC 569, 571): In this case, the Supreme Court construed the words "any secrete official code or password, or any sketch, plan, model etc." it was held that the presence of comma after password showed that the adjective secret only qualified the expression "official code or password".

Thus, punctuation is no doubt a literal and grammatical essentiality, but may not be inevitable in construing the meaning of a Statute.

(vii) Illustrations :--Illustrations aid to explain the latent content of a given section. An illustration neither exists independently nor stand opposite to the section. Illustrations are appended to a particular section for the purpose of explaining a provision of law (legal provision) in a statute. For instance, 16 illustrations (a) to (p) have been appended to section 378 of the Indian Penal Code, 1860, which illustrate various aspects of the offence of theft. Therefore, it is said that sections and illustrations move hand in glove with each other.

Sopher vs. Administrator General of west Bengal, (AIR 1944 PC 67) : In the instant case, the Supreme Court relied on illustration (i) to the section 115 of the Succession Act, 1925, while determining the scope of section 115.

(viii) Proviso :--Proviso is a clause, appended to a provision in an Act. It puts some condition, stipulation, exception or limitation upon the observance of which the operation of the Act depends. The main object of a proviso is

to discard special cases from the statute and to provide for them specially. Where the main provision of the statute is not clear, proviso can be looked into find out the exact meaning and scope of the main provision. As it is sub-ordinate to the main provision it is not interpreted as stating a general rule (*Shah Bhojraj Kuveraji Oil Mills and Ginning Factory vs. Subhas Ghandra Yograj Sinha,* AIR (1961) SC 1956 p. 1690). The purpose/function of proviso is to indicate exceptions to the enactment and to quality something in the enactment. In other words, proviso is a legislative device used/employed to carve out an exception to the main operative provision of a section in the statute. The section in a statute deals with a particular field, while the proviso carves out or takes out or excepts from the field of a particular portion. It is to be noted that the proviso cannot deal with any field except which, the section itself deals with. The proviso has no independent existence and is impliedly repealed, when the enactment/Act/Statute is repealed.

In *T.M. Kanniyan vs. Income-tax Officer, Pondicherry,* AIR 1968 SC 637, interpretation of Article 240 (1) and its proviso were in question. The Article reads :

"The President may make regulations for the peace, progress and good government of the Union Territory of..... Provided that when any body is created under Article 239A to function as a Legislature for the Union territory of..... Pondicherry..... the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature....." The Supreme Court held that the language of the main part of the provision is unambiguous and confers plenary polwer to the President to make regulations, and, therefore, the same could not be curtailed by the proviso.

In *Vishesh Kumar vs. Shanti Prasad,* AIR 1980 SC 892, the Supreme Court held that a proviso cannot be permitted by construction to defeat the basic intent expressed in the substantive provision.

(ix) Exceptions and Saving Clauses :--Exceptions are generally added to an enactment with the purpose of exempting something, which would otherwise fall within the ambit of the main provision. An exception may be referred to for the purpose of constructing the enacting portion. Exceptions must be

construed strictly and strongly against the partly trying to take the benefit. If an exception is repugnant to the operative part of the section, it must be ignored. If an exception is given an enactment, it is supposed that the provisions of the enactment will apply to all other cases, which are not covered by the exception.

Farmers' Bank of Feyetteville vs. Hale, **(59 NY 53) :** It was held in this case that, an exception in a statute, which is inconsistent (repugnant) with the main body of the act is void.

Saving clauses are generally inserted, when a statute is repealed and reenacted. A saving clause exempts a particular things from the general things enumerated. A Saving clause, which is repugnant to the body of the Act is void.

The Supreme Court in the *Director of Secondary Education vs. Pushpendra Kumar,* (AIR 1993 SC 2230) held that "a provision in the nature of exception cannot be so interpreted so as to sub serve the main enactment and thereby nullify the right conferred by the main enactment".

Collector of Customs vs. M/s. Modi Rubber Ltd., (AIR 2000 SC 1844). The Supreme Court run this case held that "whenever there is a provision in the nature of exception to the principal clause thereof; it must be construed with regard to that principal clause."

(x) Explanation : The expression 'to explain' means "to make it clear or to make known in detail". The word 'Explanation' in common parlance and in general English is understood as "making clear or intelligible to make a statutory expression more intelligible".

When the legislature feels that a particular provision in the Act/enactment/Statute is not clear and it requires explanation to clear/remove doubts, explanation is inserted/ appended to a section in the statute. The explanations help the court in interpreting the true intendment of the enactment. For example, five explanations are attached to section 108 of the Indian Penal Code, 1860 to explain clearly, the meaning of the term 'abettor'. When an explanation added towards the end of the section starts with the words – "for the purpose of this section or nothing in this section". It applies to all clauses in the section (*Commissioner of Agriculture Income Tax, Kerala vs. Plantation Corporation of Kerala Ltd.,* AIR 2000 SC p.317)

(xi) Schedules :--Schedules form part of the statute and must be read together with it for all purposes of construction. The expressions in the schedule cannot override the provisions of the express enactment. They often contain details and prescribed forms for working out the policy underlying the sections of the statute. Schedules may also contain transitory provisions, which remain in force till the main provision of the statute are brought into operation. Some statutes/enactment/ Acts comprise of two parts. The first part called 'body' contains various sections/articles. While the letter part called Schedules contains various model formats, tables etc. For example, the Constitution of India comprises of two parts. The first part, the body of the enactment contains nearly 500 articles divided into 25 parts and the second/later part comprises of 12 schedules. Similarly, the New Companies Act 2013, comprises of two parts. The first part, body contains 470 sections divided into 29 chapters and the second/later part comprises of 15 schedules.

Likewise, other enactments namely, the Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1973 etc. The division of a statute into sections and schedules is done only for convenience and hence, a schedule may contain substantive enactment, which may go beyond the scope of a section. The basic principle is that, in case of a conflict between the body of the Act and the schedule, the former (body of the Act) prevails (*Aphali Pharmas Ltd. vs. State of Maharashtra,* (1989) 4 SCC 378)

2. EXTERNAL AIDS

(EXTRINSIC OR EXTRANEOUS SOURCES OF AIDS)

The expression 'external aids or extrinsic aids' refers to "sources of information outside the four corners of the Act (Enactment / Statute), which may be used for throwing light upon its meaning." They (External tools) are considered as judicial tools. They help the courts (while interpreting a provision in the statute) to ascertain the actual and full connotation of the provision, which the internal aids could not throw ample light on the said provision.

When a rule of English Law receives statutory recognition by the Indian Legislature, it is the language of the Act which determines the scope, uninfluenced by the manner in which

the analogous provision comes to be construed narrowly, or otherwise modified, in order to bring the construction with the scope and limitations of the rule governing the English doctrine of the restraint of trade. *Superintendence Company of India (P) Ltd. vs. Ch. Krishan Murgai,* (1981) 2 SCC 246. Before going in search of any external aids of construction, let the Court look at the language employed by the Legislature because no cannon of construction can be said to be more firmly established than this that the Legislature uses appropriate language to manifest its intention. *Babaji Kondaji Garad vs. Nasik Merchants Co-operative Bank Ltd.,* AIR 1984 SC 192.

If the basic purpose underlying construction of a legislation is to ascertain the real intention of the Parliament, why should the aids, which Parliament availed of such as report of a special Committee preceeding the enactment existing state of Law, the environment necessitating enactment of legislation and the object sought to be achieved be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction. Therefore reports of the Committee, which preceded the enactment of a legislation, reports of Joint Parliament Committee, report of a Commission set up for collecting information leading to the enactment, are permissible external aids to construction. Therefore the Court can look into the history of evolution of the enactment concerned, the reports of committees and such other external aids to construction. *R.S. Nayak vs. R.A. Antulay,* AIR 1984 SC 1684.

It is true that the speeches made by the members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. *K.P. Varghese vs. Income Tax Officer, Ernakulam,* AIR 1981 SC 1922. Where words are clear and unambiguous, external aids cannot be taken. *Unni vs. Nirmala Industries,* AIR 1990 SC 933.

Where language is not clear, external aid for construction is required. The list of external aids to a statute is not exhaustive. It varies from time to time, situation to situation, society to society and place to place. Some the external aids to the statute are explained below–

SYNOPSIS

(i) Dictionaries

(ii) Text Books

(iii) Historical Facts and Surrounding Circumstances

(iv) Legislative or Parliamentary History

(v) Previous and later legislations and other/ Reference Statutes

(vi) Foreign Judgements/Decisions and Foreign Statutes

(vii) International Law: Treaties and Conventions

(viii) Contemporanea Expositio and

(ix) Government Circulars, Publications (Reports of Commissions and Committees).

* * * * *

(i) Dictionaries :--Dictionary use/reference is of great importance and immense value in interpretation of a statute. Where a word or an expression used in a statute cannot be understood in common parlance, the courts, while interpreting the statute may resort to refer dictionaries for its meaning in common parlance. Therefore, the dictionaries are referred/ consulted by the courts, whenever need arises to find out the ordinary sense of the words. However, the courts must be very careful/cautious, while referring the dictionaries because the dictionary meaning of the word may not be true at all times in a particular sense.

If a word or an expression in an Act has been defined, there is no need to refer the dictionary to find out its general meaning. Further, dictionary meaning of a word or expression cannot be relied upon or looked into in case that word has been statutorily or judicially defined.

Krishna Airyar, J. in State Bank of India vs. N. Sundara Money, (AIR 1976 SC 1111 p 1114) said-"Dictionaries are not dictators of statutory construction where the benignant mood of a law, more emphatically, the definition clause furnishes a different denotation."

One of the main objects of every dictionary of the English language is to give an adequate and comprehensive definition of every word contained in it. Dictionaries are referred to, not only for meaning of the word, but also to find out the general use of it.

Ramavatar vs. Asst. Sales Tax Officer, (AIR 1961 SC 1325) :--In this case, the dictionary meaning of betal leaves came for consideration as general vegetable species for the purpose of exemption from sales tax under the Central Provinces and Berar Sales Tax Act, 1947.

(ii) Text Books :--One of the external tools for interpretation of a statute is text books. Sometimes, courts, while interpreting a statute refer text books authored by distinguished jurists and eminent scholars, so as to arrive at a true meaning of an enactment. However, it is not necessary that the meaning of the words given in the text books should correspond to the views/opinions of the Courts (judges). Therefore, the opinions expressed by the authors of the text books and jurists may be quoted there in may be accepted or rejected all by the courts. In certain cases, Vedas are quoted with approval by courts. For instance, Manu Smriti Agna Valkya Smriti, Jimutavahana, Vignaneswara, Kanitilya etc.

Kesavananda Bharati vs. State of Kerala, (AIR 1973 SC 1461) :--In this case, the Supreme Court referred a large number of text books. The majority opinion was that, in view of many opinions and counter opinions expressed by the authors and jurists in the text books, it was not desirable to follow the opinions quoted in the text books.

(iii) Historical facts and surrounding circumstances :--The Courts, while interpreting a provision in a statute may refer some times, the historical facts and circumstances of the provision to find out its accurate, real and complete meaning of the provision in law. The external aid in the form of historical facts and circumstances surrounding the legislation is necessary and quite useful in understanding the

subject matter of the statute and thereby to arrive at the legislative intent. (*Keats vs. Lewis Merthbyr Consolidated Collieries Ltd.*, 1911 AC 631 : (1911-13) All E.R. 921)

The Supreme Court in *Express News Paper Pvt. Ltd. vs. Union of India*, (AIR 1958 SC 578) stated that "history of legislation and other like external sources may be looked into by a court in case of ambiguity."

In *State of West Bengal vs. Nriprendranath*, (AIR 1966 SC 447): In this case, the Supreme Court held that courts are free to consult the earlier statute of the law to find out the true meaning of an Act or legislation.

Further, the Supreme Court in *Shrimant Shamrao Suryavanshi Prallhad vs. Bhairoba Suryavanshi*, (2002) 3 SCC 676 : AIR 2002 SC (60) observed that historical facts and documents preceeding the legislation can be taken into consideration as aids in construing the provisions of such legislation.

(iv) Legislative or Parliamentary History :--Earlier courts, while interpreting a provision in a statute used to refer legislative history (legislative debates on the floor of the Houses) to ascertain its clear and complete meaning. The traditional English Courts used to refer the report of a committee presented to the Parliament / legislature as an external aid. But the modern trend seems to be that legislative history is not permissible as an aid to interpretation.

In *Rex vs. West Riding of Yorkshine Country Council*, [(1906) 2 KB 676], Farewell LJ said, "We have only to deal with the construction of the Act as printed and published. That is the final word of the legislature as a whole and the antecedent debates and subsequent statements of opinion or belief are not admissible."

In *Miller vs. Taylor*, ((1769) 4 Burr 2303) Willes, J. says, "the sense and meaning of an Act of Parliament must be collected from what it says when passed into law and not from the history of changes it underwent in the House where it took its rise." However, it is for the courts to decide whether legislative history to be, given weight, while interpreting a statute.

In *Ashwini Kumar Ghose vs. Arabinda Bose,* (AIR 1952 SC 369), it has been observed that "the acceptance or rejection of amendments to a bill in the course of parliamentary proceedings cannot be resorted to as extrinsic aid to construction of the words of the statute."

With the regard to the practice in India, our Apex Court (Supreme Court) followed the practice of English courts by excluding the parliamentary/legislative history as an external tool.

In *State of Travancore Cochin vs. Bombay Co. Ltd.,* (AIR 1952 SC 366), the Supreme Court held that in regard to the Articles of Constitution, the speeches made by the members of the Constituent Assembly in the course of debate on the draft Constitution cannot be admitted as the extrinsic aid to the construction of the Constitution.

In *A.K. Gopalan vs. State of Madras,* (AIR 1950 SC 27), the Supreme Court observed that the debates in Parliament on a bill are not admissible for the construction of an Act. However, it became incompatible (inevitable) to the Supreme Court to refer/consult legislative history as an aid, while interpreting a provision in the statute.

However, it became incompatible (invitable) to the Supreme Court to refer/council legislative history as an aid, while interpreting Statute.

In *Golaknath vs. State Punjab,* (1967 ALJ 813 (SC)), the Supreme Court referred to the speeches of two legislators made in the Constituent Assembly not with a view to interpret the provisions of the Article in question, which the Court did on its own terms but only to notice the transcendental character given to the fundamental rights by two of the important architects of the Constitution.

In *Sushila Rani vs. Commissioner of Income-tax and Another,* ((2002) 2 SCC 697) the Supreme Court had considered the statement of the Finance Minister while explaining object of the Kar Vivd Samadhan Scheme, 1998.

In *Indrasawhney vs. Union of India,* in interpreting the expression 'backward class of citizens', it was held that since the expression is not defined it is permissible to refer to the speech of Dr. B. R. Ambedkar to understand the context and object behind it.

In view of the above, it can be said that the Parliamentary history may be referred to for ascertaining the intent of the legislature (and not for construction)

(v) Previous and Later legislations and other reference Statutes :--When a particular branch of law is to codified and passed into Law, the members of the draft committee refer to similar statutes/Acts passed earlier/ previously and the statutes of the other countries. For instance, the Drafting Committee headed by Dr. B. R. Ambedkar referred the Government of India Act, 1935 and other foreign enactments namely the constitutions of Australia, Switzerland etc., while drafting the Constitution of India. Similarly, the courts while interpreting a particular provision in a statute may sometimes refer to previous statutes and other/foreign statutes. For example, the Code of criminal procedure was originally passed in the year 1898. Later, it was amended from time to time by subsequent amendment Acts and ultimately repealed / replaced by the Code of Criminal Procedure, 1973. Similarly, the Companies Act 1956, after several amendments was repealed and replaced by the Companies Act 2013. As such the courts, while interpreting a particular provision, may refer other statutes. As pointed out by Prudence, "**we have to look backward in order to move forward.**" When a previous Act has to be referred to in order to ascertain the meaning of a word in the later statute depends upon the system of the previous and later legislations.

Lord Dennings in *Payne vs. Bradley,* (1962) AC 343 at 357), held that it becomes permissible to look at the latter Acts under ambiguous situations where a phrase is fairly and equally open to diverse meanings, "not perhaps to construe the earlier statutes but see the meaning which parliament puts on the self same phrase in similar context, in case it throws any light on the matter."

For the purpose of systematic study, this part of the topic is explained with reference to the following heads –

(a) Statutes in pari metria : The word 'Pari' means 'same', 'Materia' means subject-matter. Hence, 'pari materia' means 'same subject matter' and 'Statutes in pari material ' would refer to the statutes on the same subject matter. The two statutes are said to be in pari material when they deal with the same subject, person or thing.

The rule of construction of statutes in 'pari material' means the rule of the exposition of one Act by the language of another act. According to Maxwell, "light may be thrown on the meaning of a phrase in a statute by reference to a specific phrase in an earlier statute dealing with the same subject-matter."

The Statutes in pari material can be lawfully referred to determine the meaning of an ambiguous word. In other words, in order to resolve an ambiguity, help can be taken from other statutes also, provided that they are in pari material *i.e.* on the same subject matter. The meaning of an uncertain word cannot be imported from any other statute. Only the statute in pari material could be legitimately called in aid.

In *Bengal Immunity Co. Ltd. vs. State of Bihar,* ((1962) AC 343 at 357), Venkatarama Iyer J. while dealing with Article 245(1) and Article 246 of our Constitution which are in pari material with Section 99(1) and 100 of the Government of India Act, 1935, observed that –

"it is well settled rule of construction that when a statute is repealed, and re-enacted, and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them under the repealed Act, because the legislature is presumed to be acquainted with the construction which the courts have put upon the words, and when they repeat the same words, they must be taken to have accepted the interpretation put on them by the courts as correctly reflecting the legislative mind."

In *Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector,* ((2007) 5 SCC 447), the Supreme Court held that where the words and expressions in a Statute are plainly taken from an earlier Statute in pari material which have received judicial interpretation, it must be presumed that Parliament was aware thereof and intended it to be followed in latter enactment.

(b) Assistance of earlier Statutes(Previous legislation) or incorporation :--Many statutes (Acts/ Enactments) are of centuries old (e.g. Indian Penal Code, 1860, Indian Evidence Act, 1872 etc.). As time passed the socio economic conditions of the people get changed. To meet the changing needs of the people, legislature amends or repeals

and replaces the old Act by passing a new Act in its place. The courts, while interpreting the existing/new Act may refer to previous/old Act.

According to Maxwell, previous legislation may be relevant to the interpretation of later statutes in two ways:

(a) First, the course which legislation on a particular point has followed often provides an indication as to how the Act at present should be interpreted; and

(b) Secondly, light may be thrown on the meaning of a phrase in a statute by reference to a specific phrase in an earlier statute dealing with the same subject – matter.

The incorporation of an earlier Act and mere reference of an earlier Act are two separate and distinct things, a distinction is also to be drawn when what is referred to is not an earlier Act or any provision from it but law on a subject in general.

Where a statute by specific reference incorporates the provisions of another statute as of the time of adoption the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. (The legislative device of incorporation is adopted for the sake of convenience of drafting in order to avoid verbatim *i.e.* exact or word for word reproduction of the provisions of an earlier Act into the later Act.)

In cases of incorporation in a subsequent Act of certain provisions by reference from an existing Act the independent existence of the two Acts is recognized and despite the death of the parent Act, its offspring survives in the incorporating Act though there is no saving clause (*Privy Council in Secretary of State of India in Council vs. Hindustan Co-operative Insurance Society Ltd.,* L R 58 IA 259 per Brett L J).

In *Kathama Natchiar vs. Dorasinga Tever,* (1875) 2 IA 169 PC, it was held that where the words used in a statute have been subjected to interpretation by a superior Court and certain meaning has been attributed to them and subsequently in a later statute same words in similar context in the later statute intends that those words must receive same

interpretation in the later statute, as was assigned to them while constructing earlier statute.

(c) Assistance of later statutes (help from Subsequent Legislations) :--There has been a conflict/difference of opinion as to the question, whether subsequent/later statutes are referred to, at the time of construction of an earlier statute. Normally, a later Statute (subsequent legislation) is not used as an aid to construction of an earlier/previous statute. But, there are certain circumstances in which a provision in an earlier statute is ambiguous, the later statute serves as a parliamentary (legislative) exposition of the earlier Act/Statute.

According to Coke, "such an Act should not be construed by any strained sense against the latter of the previous Act, for of any exposition should be made against the direct letter of the exposition made by Parliament, there would be no end of expounding."

Where as the other opinion is, an earlier statute, in *Vaijanath vs. Guramma,* ((1999), 1 SCC 292), it was held that a subsequent enactment or legislation cannot be used to interpret an earlier enactment.

In *Re Mc Manaway,* ((1951) AC 161) it has been stated that used special conditions the law does admit a subsequent Act to be resorted to for the interpretation of an earlier Act.

In *Att. General vs. Classen,* ((1921) 2 KB 403) it has been clearly established that subsequent legislation may be looked at an order to see the proper construction to be put upon an earlier Act where the earlier Act is ambiguous.

Cape Brandy Syndicate vs. I.R.C., [(1921) 2 KB 403, p 414 (CA)], made an important observation in this regard – it is clearly established that a subsequent legislation on the same subject may be looked to in order to see what is the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. The subsequent legislation cannot alter the previous legislation, but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier.

The rule of construction stated above of Lord Sterndale applies only when the earlier Act is ambiguous, *i.e.* fairly and equally open to diverse meanings.

In *Ammini vs. State of Kerala*, the Supreme Court referred to sec 293(4) Code of Criminal Procedure which before its amendment used the expression Director only. After amendment Deputy Director and Assistant Director were expressly included with the Director. The Supreme Court after referring to this change held that Joint Director (higher rank than Deputy Director and Assistant Director) must be deemed to be included in 'Director' otherwise he would also have been expressly included by the amendment and that this construction was also applicable to the word 'Director' before the amendment to the section.

(vi) Foreign Decision/Judgments and Foreign Statutes :--The notable historical fact of the higher judiciary in India is the application/importation of English and American principles of law. Britishers ruled India for three and half centuries *i.e.* from 1600 A.D. to 1950 A.D. Consequently, most of the Indian legislations are modelled on the previous English Statutes. Similarly, the principles laid down in many decisions of the common law courts in England have been approved and followed in Indian Courts. Therefore, the Indian legal / judicial system is the replica of the English jurisprudence. Before, independence *i.e.* before the establishment of the apex Court (Federal Court/ Supreme Court) in India, appeals from the Indian High Courts were heard by the Privy Council in England. The several principles of law coined/evolved during the judicial pronouncements (decisions) of the Privy Council were followed and applied in Indian Courts, even after the independence till date. It is to be noted that a number of statutes in India, substantial and procedural namely the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1898 etc. were drafted by the British Parliament, which are applied in Indian Courts. Similarly, the Law of Torts not being a Codified law, the English Common Law is invariably applied by the Indian Courts in deciding cases of Torts, subject to certain modifications.

Mr. M. C. Setalved states, "Very often the general rule in Indian Code was based on an English principle and in such

cases, the Indian Courts frequently sought the assistance of English decision to support the conclusions they reached. They could not do otherwise for not only the general rules were contained in the Code but some of the illustrations given to clarify the general rules were based on English decisions."

In *Union of India vs. Naveen Jindal,* ((2004) 2 SCC 510), it was held that although interpretation of Constitution of India should be primarily based on materials available in India, relevant rules of other countries can be looked into for guidance.

Similarly, the Law of Torts not being a Codified law, the English Common Law is invariably applied by the Indian Courts in deciding cases of torts, subject however, the foreign decision are not compulsory/compelling decision, but only persuasive decisions.

Venkatramaih J. in – *National Textile Workers Union vs. P.R. Ramakrishnan* (1983 (1) SCC 228), stated that, "the practice of relying upon foreign decisions whatever may be their age, only when they are in conformity with what the courts in India wish to hold and of condemning them only on the ground that they ancient foreign decisions when they do not accord with our views is not correct. There is no reason why a well-reasoned foreign decision should not be followed unless it is opposed to our ethics, tradition and jurisprudence or otherwise unsuited to Indian conditions."

In *Liverpool and London S.P. and I. Assn. Ltd. vs. M.V. Sea Success,* ((2004) 2 SCC 510), it was held that Supreme Court is not bound by American (foreign) Court decisions and those decisions have only persuasive value. But the Court can borrow the principles laid down in a foreign decisions, if the same are in consonance with Indian law keeping in view the changing global scenario.

(vii) International Law : Treaties and Conventions :- -One of the most important branches of public law is, International Law. It is also known as, "the law of Nations". It is of two kinds namely 1) Public International Law and 2) Private International Law or Conflict of Law. International Law is a body of rules and principles, which regulate the conduct and relations of the members of the International Community (United Nations Organisation or UNO or U.N.). the term

'convention' literally means "the act of convening a conference, as assembly, representatives or delegates assembled for a common cause". In simple words, if an agreement is signed and adopted by all or majority of the states (counties) with regard to claims or rights on a particular subject matter, it is called 'convention.' E.g. United Nations Convention on Law of the Sea, 1982. Similarly, conventions regard to right over air space, outer space, etc. Where as the term 'treaty' means an agreement entered into between two or more states (countries) on a particular subject. How a contract is entered into between two or more parties, a treaty is entered into between / among two or more states. E.g. an agreement between India and Pakistan is called Indo – Pak Treaty.

International treaties and conventions are also are one of the external tools of interpretation and hence, it is permissible to refer them at the time of interpreting a provision in a Statute. When a Statute is required to be read with an international treaty, provisions contained in the latter is imperative (*Sarabijit Singh Rick vs. Union of India,* (2008) 2 SCC 417). Although, international treaties, covenants and conventions may be a part of our municipal law (municipal law means territorial law *i.e.* a law applicable within the territory of a country. E.g. the Indian Penal Code, 1860), and hence they can be referred to and followed (*Pratap Singh vs. State of Jharkhand,* (2005) 3 SCC 551).

In *Re Burns Philip & Co.,* ((1958) 1 Llyods Rep 342) the High Court of Australia had held that it was permissible to refer to an international convention where a particular enactment (based on it) was ambiguous.

Salmon vs. Customs and Excise Commissioner, ((1967) 2 Q B 116): In this case, the Court of Appeal – the Court of Appeal has held that even where the Convention is not directly mentioned in an Act resort to it may be made in the interpretation of an Act clearly based upon it. (Craies on statute law, 7th edn. P.132)

(viii) Contemporanea Expositio or contemporaneous Exposition or construction :--The word 'Contemporanea' means "of the same time or the same period"; and the word 'Expositio' or 'Exposition' means "explanation." Hence, the expression 'Contemporanea

> Expositio' means "interpreting a statute or any other document by referring to the exposition, it has received from contemporary authority." In other words, the meaning attributed to the words of a statute at the time of passing of that Statute shall be retained by those words even subsequently. For instance, during British rule, statutes passed/issued by the then crown (King or Queen of the British Empire) were called the charters. With the passage of time the words used in law /statute get changed because the words used therein might shrink or expand in their scope. But, the words must be assigned the meaning, which they borne at the time of enactment of law.

The rule of Contemporanea Expositio was coined for the first time by Lord. Coke in speaking of the Magna Carta in the following words–

"This and the like were the forms of ancient Acts and graunts, and the ancient Acts and graunts must be construed and taken as the law was holden at that time when they were made."

According to Maxwell, "It is said that the best exposition of a Statute or any other document is that which it received from contemporary authority."

According to Black Law Dictionary, *"Contemporanea Expositio est optima et fortissimo in lege", i.e.* 'the Contemporaneous Exposition is the best and strongest in the law.'

The principle of contemporaneous exposition can be invoked in suitable cases but it will not always be decisive on the question of construction. Although it has no controlling effect it is nevertheless entitled to considerable weight as being of highly persuasive value. If the interpretation is erroneous the court will not hesitate in refusing to follow the construction arrived at by the application of this principle (*Re Oswal Agro Mills Ltd.,* AIR (1993) SC 2288).

In *Bhuwalka Steel Industries Ltd. vs. Bombay Iron and Steel Labour Board,* ((2010) 2 SCC 273), the Supreme Court has observed that 'Contemporanea Expositio' is applicable only to interpretation given by Courts and not to views taken by

Government or its officials. Moreover, it is applicable only to construction of ambiguous language used in very old statues where the language itself had a rather different meaning in those days.

In *R.S. Nayak vs. A.R. Antuley,* (AIR 1984 SC 684), the Supreme Court construed Section 21 of Indian Penal Code, 1860 by referring to the principle of 'Contemporanea Expositio' and it was held that a Member of Legislative Assembly (MLA) is not a public servant as defined in the section.

(ix) Government Circulars, Publications (Reports of Commissions and Committees) :--Government Circulars, Government Publications and Reports have been considered as external aids in construction of statutes. Hence, the courts at the time of interpretation refer them, unless they do not go against the spirit of statute under which they are issued.

In *Commissioner of Trade Tax U.P. vs. M/s. Kajaria Ceramics Ltd,* (AIR 2005 SC 2968 = 2005 (11) SCC 149, it has been held that, "The Circular can be read as a contemporaneous understanding and exposition of the intention and purport of the Notification. Courts have treated contemporary official statements as contemporary exposition and used them as aids to interpret even recent Statutes."

Government publications may consist either of the Reports of the Committees or Commissions or explanatory notes regarding the working of the Act issued by the Government for the assistance of their officials.

In *Express Newspapers (Pvt.) Ltd. vs. Union of India,* (AIR 1958 SC 578), the Supreme Court referred the Press Commission's Report.

In *Shrimant Shamrao Suryavanshi vs. Pralhad Bhairaoba Suryavanshi,* (AIR 2002 SC 731), the question before the Supreme Court was interpretation of Section 53 – A of the Transfer of Property Act while interpreting the section of the Court referred to the recommendations contained in the report of the Special Committee set up by the Government of India and upheld the validity of Section 53 – A of the Transfer of Property Act.

In *R. S. Nayak vs. A.R. Antuley,* (AIR 1984 SC 684), the Supreme Court held that report of the Committee, report of joint Parliamentary Committee and the report of the commission constituted for collecting the information leading to the legislation are permissible external aids to construction of the Act.

LECTURE IV

INTERPRETATION OF STATUTES

SYNOPSIS

1. Interpretation : Meaning and Definition
2. Object or Purpose or Necessity of Interpretation
3. Construction : Meaning
4. Types of Constructions and
5. Interpretation and Construction

* * * * *

1. Interpretation : Meaning and Definition :

Meaning :--Interpretation is one of the multidimensional functions of the judiciary. The purpose of passing any statute (act/enactment /legislation) by legislature is to apply the same in Courts. The main purpose of judiciary is to deliver pure and impartial justice. One of the main sources of law is legislation (the other sources are custom, precedent, etc.) The Courts, while deciding a case basing on legislation (statute/ act/enactment) should interpret the statute in strict adherence to the intention of legislature to deliver pure and impartial justice. Interpretation is a process by which Courts find out the true and clear meaning of certain words and provisions used in the statute, which are vague and ambiguous. In simple words, interpretation is an act of explaining a text, which is not clear. In legal sense, "it means an act of Courts, while deciding a case to find out the correct and clear meaning of a provision in a statute to decide the case".

According to Webster's New World Dictionary, 'interpretation' means," the act or result of interpreting, explanation, meaning, translation, exposition etc."

'Interpretation' is the act of making intelligible what was before not understood, ambiguous, or not obvious. Interpretation is an act to give meaning to it, where the meaning is uncertain, unclear, vague and ambiguous or none, as per rules enunciated by Courts.

Definition :--It is very difficult to define the concept of interpretation. However, several attempts were made to define the concept. Notable among them are detailed below –

1. **Salmond** :--According to Salmond, "Interpretation is the process by which the Courts seek to ascertain the meaning of the Legislature through the medium of authoritative forms in which it is expressed."

2. **Crawford** :--In the words of Crawford, a distinguished jurist, "Interpretation is the art of finding out the true sense of words."

3. **C.K. Allen** :--According to C. K. Allen, "The operation of a statute is not automatic, and can never be so. Like all legal rules, it has to operate through application - in other words, through interpretation of the courts."

4. **Cross** :--According to him, "Interpretation is the process by which Courts determine the meaning of a statutory provision for the purpose of applying it to the situation before them."

2. Object or Purpose or Necessity of Interpretation :--The object of interpretation is the effective application of the principles of law to the given set of facts or situations which can be explained with reference to the following heads namely–

(i) To find out the intention of the legislature :-- The main object of interpretation by courts is to find out the real meaning of a particular word or provision, which the legislature intended to convey. The main purpose is to ascertain what is expressly or impliedly meant by the language of the statute. The legislature, while drafting a statute keeps in mind the general issues. Whereas, the courts, while interpreting a provision in a statute, takes into consideration certain specific issues, that appear before the Courts.

The purpose of passing any legislation by the legislature is to achieve certain objectives. After passing of the legislation (law/Act/enactment/Statute) the function of the legislature comes to an end and then the statute (legislation/Act/law) comes into the hands of the judiciary to interpret the words and provisions used/enshrined in the statute to find out the true/real meaning and the intent of the legislature behind therein.

In *Union of India vs. Filip Tiago De Gama,* ((1990) 1 SCC 277), the Supreme Court explained the object and purpose of interpretation thus:

> "The paramount object in statutory interpretation is to discover what the Legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation."

(ii) To remove Ambiguity :--Statutes are drafted by the drafting committee consisting of the Chairman and few members, who are subject experts. They draft the bill proposing the statute by using certain words and phrases of a language, generally English. Some times, the courts, while interpreting a word or provision in statute may find it ambiguous. The word 'ambiguity' means "uncertainty or unclear." The ambiguity may be patent or latent. The word patent means ambiguity is apparent and is visible on the face of the instrument. Where as the word 'latent' means "hidden or concealed or suppressed." In other words, the courts (judges) cannot detect the ambiguity of the words used is the statute. Ambiguity arises, where the words used in a statute have more than one meaning.

In *Motor Owners Insurance Co. Ltd. vs. Jadavji Keshavji Mode Co. Ltd.,* (AIR 1981 SC 2059), the Supreme Court has held that "Where language is ambiguous or capable of more than one meaning, Court must sympathetically and imaginatively discover the true purpose and object of the provision by filing gaps, clearing doubts and mitigating hardships, harshness or unfair consequences."

In *Prakash Kumar alias Prakash Bhutto vs. State of Gujarat,* ((2005) 2 SCC 409), it has been observed that the every statute is to be interpreted without any violence to its language. When an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the consequences of the alternative constructions.

In *State of Jharakhand vs. Govind Singh,* ((2005) 10 SCC 437), it has been observed that when the words of a statute

are clear, plain or unambiguous *i.e.* they are reasonably susceptible of only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.

In *Tata Consultency Services vs. State of A.P.,* (2005) 1 SCC 308), it has been held that a Court should not be overzealous in searching ambiguities or obscurities in words which are plain.

3. Construction :--Meaning – The term 'construction' is a process, by which the meaning of an ambiguous (unclear) provision in a statute or written document or oral agreement is determined. According to Webster's New World Dictionary, 'construction' is an act or process of constructing, the way in which something is constructed, manner or method of building.

According to Cooley, 'construction' is the process of drawing conclusion respecting subject that lie beyond the direct expression of text which are in the spirit through not within the letter of law.

Statutory Construction is a process of discovering and expounding the meaning and intention of the authors of law with regard to its application in a particular case / situation.

Justice Martine defines, 'Statutory construction' as "the art of seeking the intention of the legislature in enacting a statute and applying it to a given stole of facts."

The function of construction is the drawing of conclusions respecting subjects that lay beyond the direct expression of the text from the elements known from and given in the text.

4. Types of Construction :--Generally there are two types of constructions namely, (1) Liberal Construction and (2) Strict construction. The purpose of any construction, either strict or liberal is to give effect to the legislative intention and shall not defeat the intention of the legislature in any manner. The Courts, while interpreting a statute to determine the purpose of law, what type of construction is to be resorted to depends upon the object and purpose of the statute. Hence, it is to be noted that the choice between a strict or liberal construction arises only in case of doubt in regard to the intention of the legislature.

Liberal Construction :--A construction, which broadens the operation of an enactment is called "Liberal Construction." After the enactment of any law the function the legislature comes to an end and the statute comes into the hands of the judiciary. Then, the judiciary (Courts /Judges), while deciding the case interprets the words and provisions used by the legislature in the Statute/Act. There can be no beneficial construction of a Statute if the words and provisions are clear and certain. Otherwise, beneficial construction of that Statute can be done in order to advance the objective behind the statute. Such beneficial measure shall be construed liberally. Where the application of an enactment yields a beneficent result *i.e.* one which is beneficial to the subject or statute, the interpretative factors may on balance indicate that the court should widen its application, which is known as " Liberal Construction."

If the legislative purpose of the statute is such that a statutory series should be read ejusdem genies then the rule is helpful, if not the rule is more likely to defeat them to fulfil the purpose of the statute. This like any other rules of statutory interpretation is a useful servant but a bad master. According to this rule when particular words pertaining to a class, category or genus are followed by general words, they are to be construed as limited to the things of the same kind as those specified.

Strict Construction :--Strict construction is one, which restricts or narrows the operation and effects of the enactments is known as 'strict construction.' Strict construction gives primacy to the letter of the law and plain meaning of the words. It refuses to expand the law by implications or equitable consideration. It confines its operation to cases, which are clearly within the letter of the statute as well as within the spirit or reason. It resolves all reasonable doubts against the applicability of the statute to the particular case.

For instance, taxing statutes are strictly construed. A statute imposing penalty or levying tax should be interpreted strictly. Strict construction does not exclude contextual purposive or plain language construction (*Tarachand vs. Gram Panchayat, Jhupa Khurd,* (2012) 3 SCC 722, (2002) 96 DLT 691)

5. Interpretation and construction :--The terms Interpretation and construction are used as synonymous terms. According to Sotherland," Interpretation and construction are now a days are used interchangeably. He defines the distinction between interpretation and construction as erroneous. However, a pedantic distinction is drawn between the interpretation and construction.

Interpretation : Meaning and Definition :--Interpretation is a process to ascertain the real and true meaning and legislative intent of a particular word or provision used in the statute, which was unclear and vague.

Interpretation is the art or process of discovering and expounding the intended signification of the language used in a statute *i.e.*, the meaning which the author designed it to convey to other.

According to salmond, a distinguished jurist, Interpretation is the process, by which the court seek to ascertain the meaning of the Legislature through the medium of authoritative from in which it is expressed."

According to Crawford, 'Interpretation' is the art of finding out the true sense of words.

Construction: Meaning and Definition :--According to Webster's New World Dictionary, 'construction' is an act or process of constructing, the way in which something is constructed, manner or method of building. Construction is the process by which the meaning of an ambiguous provision of a statute, written document, or oral agreement is determined.

Cooley defines 'Construction' as the process of drawing conclusions respecting subject that lie beyond the direct expression of text which are in the spirit through not within the letter of law

Distinction between Interpretation and Construction :--Literally speaking, interpretation and construction, which are used interchangeably, convey the same meaning and are used for the same purpose *i.e.* to find out the intention of the legislature (legislative intent) or intention/inclination of the maker of a deed or will. However, they differ from technical point of view.

The purpose/function of interpretation is confined/ limited to find out the true sense of the words, which the author intended to convey-and nothing further. Whereas the purpose/ function of construction is the drawing of conclusions respecting subjects that lay beyond the direct expression of thee from the elements known from and given in the text.

In *Bloomer vs Todd,* Wash Terr 599, 612 the House of Lords of UK observed "Interpretation differ from construction in this: that it is used for the purpose of ascertaining the true sense of any from of word ;while construction involves the drawing of conclusions regarding subjects that are not always included in the direct expression".

Justice Venkatachalaiah in--

CWT vs. Hashmatunnia Begum, (1989 Supp. (2) SCC 43 at p-50) opined that, there is a difference in the interpretation and construction.

Following are the notable points of distinction between interpretation and construction–

1. Interpretation is a process by which the true sense or meaning of the word is understood and hence, interpretation is not a question of law. Where as in case of construction, every act or deed is construed using the ordinary words. The proper construction of an Act is a question of law.

2. Interpretation lies within the letter of law as it depends upon the spirit of the law. while construction does not lie within the letter of the law as it depends upon the conclusions, which lies in the spirit.

3. Construction is the means of interpretation, while interpretation is the end-and.

4. Interpretation aims to ascertain the true sense of words used in a statute., where as construction involves the drawing of conclusion regarding subjects that are not always included in the direct expression.

LECTURE-V

GENERAL PRINCIPLES OF INTERPRETATION

(RULES OF STATUTORY INTERPRETATION)

Interpretation of statute is a critical task, which involves compliance of certain formalities and strict adherence to the principles and rules of interpretation. When a legislation is to be passed in to law, a bill to that effect a has to be passed by the law making authority, legislature (the parliament /supreme legislature comprising of Lok Sabha/House of people; Rajya Sabha/the Upper House/Council of states and the President of India). After the Bill is passed by two third majority of both the houses, it will be sent to the president for his/her assent. Then the Bill, after the assent by the president will be published in the official gazette for its enforcement in the courts of law. Then the courts (judiciary) interpret the law/legislation/ enactment/statute so passed by the legislature in strict adherence to the principles of justice, equity and in particular the general rules and principles of interpretation as detailed below:

SYNOPSIS

1. Predominence of Legislative Intent
2. The Rule of Harmonious Construction
3. Same Word to have Same Meaning
4. Ex Visceribus Actus
   (Statute should be read as a whole)
5. UtRes Magis Valeat Quam Pereat

   (It is better to validate a thing,
   than to invalidate it)
6. Expressio Unius Est Exclusio Alterius or

   (Express mention of one thing implies
   the exclusion of another)
7. Exapressum Facit Cessare Tacitum

   (Expression precludes implication)

8. Contemporanea Exposito Est Optima
   Et Fortissima In Lege

   (Contemporaneous expression is the best and strongest in the law)

9. Noscitur a sociis (Associated words) and

10. Ejusdem generis (of the same kind)

* * * * *

Intention of Legislature Predominates (Predominance of Legislative Intent) :

The main object of all interpretation is to discover/ ascertain/find out the intention of the legislature (the law making authority *i.e.* the parliament or state legislature). The duty of the court is to expound the law as it stands and to "leave the remedy (if one be resolved upon) to others.

The courts, while interpreting the word and provisions used in the statute shall take into consideration, the intention of the legislature in using such words. If the meaning of the words is clear and unambiguous, they can be applied as they stand, even if they may not represent the real meaning of the legislature. The intention of legislative has two aspects namely i) meaning of the words used and ii) purpose and object or the reason and spirit pervading through the statute. The legislature, while making a statute opens its mind in the form of language for using the words in the statute .The language used may contain some times simple meaning or it may be ambiguous or vague meaning. If the meaning of the word used is clear, precise and specific, the words/language itself contains/declares the legislative intent. If the meaning of the words/language is not clear and vague, it becomes necessary/ incompatible to the courts to interpret the intention of the legislature by using such word

Raghunath Rai Bareja vs. Punjab National Bank, (2007)2 scc 230): It was held in this case that, language used for words and provisions the statute is a determinative factor of legislative intent.

The courts, while determining the legislative intent shall take in to consideration three factors namely i) The context and object of the statute, ii) nature and precise scope of the

relevant provisions and the damage suffered not of the kind to be guarded (*Rajkot Municipal Corporation vs Manjulaben Jayantilal Nikum,* (1997) SCC 552)

Therefore, it is to be noted that intention of legislature is the most important factor for effective interpretation of a statute for sound administration of justice in accordance with law.

2. A construction to avoid absurdity is permissible (The Rule of Harmonious Construction) :--Despite the best endeavour by legislature with a strong inclination to serve the public purpose, there are certain circumstances in which, two provisions in a statute are inconsistent (conflict) with each other. It gives rise to "intra-statutory conflict "leading to "head -on -clash with the legislative object. In other words, the conflict/inconsistency between the two provisions of equal importance gives room to defeat the legislative object, unless harmony is maintained between both the conflicting provisions. In such situation, both the provisions should be interpreted, as far as possible, by giving equal effect /importance to both of them so as to arrive at harmonious construction. (For instance, where a conflict between fundamental right and directive principle of state policy takes place, courts maintain harmony between the two by keeping in view the circumstances of the case *i.e.* in some cases fundamental right is preferred over the directive principle, while in other cases directive principle is given priority over the fundamental right .In other words, both are given equal importance *i.e.* harmony is maintained between the two. In other words, the rule of interpretation requires that the courts, while interpreting two inconsistent /repugnant provisions of a statute ,should make an effort so as to harmonise the conflicting/inconsistent provisions so that the purpose of the Act will be given effect to both the provisions. This type of umpiring technique used by the court is called "Harmonious Construction". It is to be noted that harmonious construction is possible, where two provisions in a statute are distinct and separate *i.e.* conflict /in consistent with each other.

The courts, while interpreting a statute, are permitted to avoid absurdity and apply harmonious construction.

The Supreme Court in–

State of Punjab vs Ajaib Singh, (AIR 1953 SC 10) : observed that, when two distinct constructions are possible, the court must adopt that, which will ensure smooth and harmonious working of the constitution and eschew the other, which will lead to absurdity or give rise to practical inconvenience.

Keshavananda Bharati vs State of Kerala (popularly known as Fundamental Rights case: AIR 1973 SC 1461): In Fundamental Rights case, the Supreme Court, by construing the world 'law; occurring in clause (2) of Article 13 of the Indian constitution to mean 'ordinary law of the land 'and not the amendment of the constitution. The court harmonized the article 13(2) with article 368 of the constitution, which empowers the Parliament to amend the constitution.

3. Same word to have same meaning, unless otherwise intended :--The legislature, while drafting a statute uses different words. The presumption is that each and every word used at different places of the statute *i.e.* in different clauses of a sections, different section of the statute etc., must be use in the same sense and must convey the same meaning, unless there is something otherwise/repugnant in the context. In other words, different meanings cannot be assigned to the same word in a statute so as to suit the convenience

Bhogilal Chunnilal Pandya vs. State of Bombay, (AIR 1959 SC 356) In this case, the supreme court through WanChoo J, observed that-"words are generally used in the same sense throughout in a statute, unless there is something repugnant in the context. However, it would be difficult for the courts to find out, whether the same word has the same meaning or not.

In *Farrel vs. Alexander,* [(1976)2 A11.E.R. 721], it has been held that where draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning.

In *Bhogilal Chunnilal vs. State of Bombay,* [AIR 1959 SC 356], it was held that the word are generally used in the sane sense throughout in the statute unless there is something repugnant in the context.

Sometimes, the same word used at different places in one clause of section may not convey the same meaning having regard to the context of its use. In other words, the meaning

of the word changes depending upon the context in which it is used

Maharaj Singh vs. State of U.P., (AIR 1976 SC 2602) In this case, it was held, the word 'vesting' used in section 117(1) of the U.P Zamindari Abolition and Land Reform Act, 1951 in respect of the state was absolute and the same word 'vesting' used in Sabha was limited.

4. Statute should be read as a whole in its context (*Ex visceribus actus*) :--The courts, while interpreting the provision of a statute must at look the whole statute to find out the legislative intent and object to be achieved. This principle is enshrined in the maxim *"ex visceribus actus"*, which means, "everypart of the statute must be construed within the four corners of the Act." In other words, every provision in a statute should be interpreted as a whole from all corners covering all parts and no provision should be interpreted in isolation. When the language of a provision or word is not clear and ambiguous due to the reason a part of the word or provision does not convey the clear meaning, that part of the word or provision should not be omitted and the word or provision must be read as a whole in context. In simple words, a word or provision in a statute must be interpreted/construed as a whole from four corners. If a part of the word or provision is unclear, it should not be omitted and the words of the provision in a statute must be read as whole covering all parts of the word/provision. The intention of thc legislature can be found only by reading the statute as a whole and no provision should be interpreted in part in isolation.

Lord Davey says that " every clause of the statute must be construed with reference to context and other clauses of the Act ,so as to make a consistent enactment of the whole statute or series of statute relating to the subject matter.

According to lord Greene MR, "to ascertain the meaning of a clause in a statute ,the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself". As per Lord Coke, "It is the most natural and genuine exposition of a statutes to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the markers. And this exposition is *"ex viscerribus actus"*

In *Darshan Singh vs State of Punjab,* [AIR 1953 SC 83 p. 86], B. K Mukerjee, J. states the rule of *ex visceribus actus* as given below: "Word and phrases occurring in a statute are to be taken not in an isolation or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself.

In *State of W.B. vs. Union of India,* [AIR 1963 SC 1214 at p. 1265], Sinha, C.J.I. observes, "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other part of the law ,and the setting in which the clause to be interpreted occurs."

As stated earlier, the same word may mean one thing in one context and another meaning in some other context. That is why, the same word used in different contexts in different clauses of a section/different section of a statute may convey different meaning resulting in ambiguity. This ambiguity can only be removed by reading the statute as a whole. Therefore, the purpose of the rule of *"ex visceribus actus"* is to arrive at the true meaning of any particular word/phrase in a clause/ section by comparing it with other clauses/section by reading /studying the statute as a whole.

5. *Ut res magis valeat quam pereat:* (It is better, to validate a thing, then to invalidate it): One of the general principles of interpretation is, it is better, to validate a thing rather than to invalidate it". This principle is enshrined in the maxim, "*Ut res magis valeat quam pereat*", which means "it is better for a thing to have effect than to be made void". This principle envisages a statute should be interpreted in such way so as to make it effective and operative and should not remain it inoperative. In other words, the maxim means, "it may rather become operative than nullity, to uphold the constitutionality of statutes, whenever it can rationally be done". In simple words, accordance is better than discordance". Basing on this principle, any statute or a provision therein has to be construed so as to make it effective and operative.

This maxim has been explained in Maxwell's 'Interpretation of statutes' (11th Edition p.228) thus : "Notwithstanding the general rule that the full effect must be given to every word, yet if no sensible meaning can be given to a word or phrase, or if it would defeat the real object of the

enactment, it may ,or rather it should, be eliminated .The word of a statute must be construed so as to give a sensible meaning to them if possible .They ought to be construed *ut res magis valeat quam pereat.*

This principle envisages that courts, while pronouncing upon the constitutionality of a statute should start with a presumption in favour of constitutionality so as to place the statute within the competence of the legislature .Further this principle states that a statute must be construed in such a manner so as to make it effective and operative .When two meaning exist, one makes the statute absolutely vague and meaningless and the other leading to certainty and meaningful interpretation, the latter interpretation should be taken in to consideration so as to make the statute operative.

In *Murray vs. I.R.C.,* [(1918) AC 541] Lord Dunedin said, 'It is our duty to make what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable.

In *Swami Atmanada vs. Sri Ramakrishna Tapovanam,* [(2005 10 SCC 51] the supreme court held that a statute, as is well known ,must be read in such a manner so as to give effect to the provisions thereof. It must be read reasonably. A statute must be construed in such a manner so as to make it workable.

In *K. P Mohammed Salim vs. C.I.T., [(2008* 11 SCC 573] the Apex Court reiterated the principle that a provision must be construed in such a so manner so as to make it workable.

Union of India & Ors vs R. Vesudeva Murthy & Ors, decided on 6th Augest 2010 is another service matter in which the principle of 'Ut Res Magis Valeat Quam Pereat'is invoked.

However, it may happen sometime that careless drafting of a legislation may result in failure to achieve the object of validation wholly or partially.

It was held in –

Delhi Cloth and General Mills Co. Ltd vs. State of Rajasthan, (AIR 1996 SC 2930 P. 2935): that a validating Act cannot be held valid and effective, if it simply deems a legal consequence without amending law from which the said legal consequence could follow.

6. *Expressio unius est exclusio alterius* (Express mention of one thing implies the exclusion of another): One of the fundamental principles of interpretation is *'Expressio Unius est exclusio alterius'. It* means "an express mention of one or more things of a particular class may be regarded as silently excluding all other members of the class". Inshort, express mention of one thing implies the exclusion of another, where two expressions have been used in a statute, one of which generally includes the other. Then, the more general expression excludes the less general expression. In other words, an express enactment shuts the door to further implication. The method of construction according to this maxim must be carefully watched. It is a valuable servant but a dangerous master. The maxim out not to be applied, when its application leads to consistency or injustice.

In *Parbhani Transport vs. Road Transport Authority,* [AIR 1960 SC 801], permits to ply buses have been given to the State of Bombay under the Motor Vehicles Act, 1939. The Petitioner argued that since the Act permitted the Government to play buses could not be run by it otherwise. He quoted the maxim *expression unius est exclusion alterius.* The Supreme Court disallowed the application of the maxim on the ground that the language of section 42(3)(a) is unambiguous to the effect that the Government has to apply for permits under section 42(1) for plying buses.

In India the fundamental rights under Articles 15, 16 and 19 are available to the citizens of India and not to other person and non-citizens thus are expressly excluded. In *Bennett Coleman vs.Union of India,* the supreme court interpreted the term 'citizen' and clearly laid down that the freedom under Article 19 cannot be claimed by non-citizens nor by the legal person (*i.e.* firms, companies etc.) as they are not citizens. However, Indian citizens may claim these freedoms through their legal persons because the relief ultimately goes to the citizen and not to the legal persons

7. Expressum Facit Cessare Tacitum (Expression precludes Implication) : This maxim *"expressum facit cessare tacitum" is* an analogous to the principle" expressio *unius personae vel rei ,est exclusio alterius". It* connotes that, where there is express mention of certain things, then anything not mentioned is excluded. In other words, this maximum lays down that express words put an end to implication.

8. Contemporanea Exposito Est Optima Et Fortissima in Lege (Contemporaneous expression is the best and strongest in the law) : The maxim "*Contemporanea exposite est optima e fortissimo in lege*" means "contemporaneous expression is the best and strongest in law". This maxim envisages that, the language used in a statute must be understood by those live at and around the time, when it (statute) was passed. According to this principle, the courts while interpreting a statute shall take into consideration, the language used by the law makers at the time of its passing in its natural and ordinary sense. (For instance, many statutes/ legislation/Acts were passed in the 19th century. Eg . Indian Evidence Act, 1872, the Indian Penal Code, 1860 etc. The language used in these Acts, by the then law makers as per the circumstances *i.e.* prevailing conditions social, economic ,cultural etc. at that time shall be taken into consideration while interpreting a statute. This principle was propounded for the first time by Coke, when speaking of the Magna Carta .This maxim is not to be applied in the interpretation of modern statutes as the language used is not suitable in the modern progressive societies. But, this rule is of some significance in the form of executive construction, which would have been a valuable aid. In India ,this rule is not of much use as it is useful to interpret to old statutes and there are no old statutes in India and the earliest extant statute in the Indian Statute Book is of 1836 .

The principle has been discussed in the *Government Transport Service Bombay vs. S.L. Mishra,* [(1996) 72 Fac.L.R. 675 (Bom.)] as given below:

It has been pointed out by the supreme Court that where the words used in the statute are clear and admit of no ambiguity, it would be erroneous to construe them by resorting to the principle of *contemporanea expositio.*

In *M/s. J.K Cotton Spinning and Weaving Mills Limited vs. Union of India,* [AIR 1988 SC 191], the supreme court has observed that the maxim contemporanea expositio is applicable in construing ancient statutes but not in interpreting Acts which are comparatively modern such as the Central Excise and Salt Act, 1944.

In *Raja Ram vs. State of Bihar,* [AIR 1964 SC 191], the supreme court has refused to apply the rule of *contemporanea*

exposito while interpreting section 25 of the Indian Evidence Act, 1872 on the ground that the Act was of comparatively recent origin.

9. Noscitur a Sociis (Associated Words) : The word 'Noscere' means "to know" and the word 'sociis' means "association". Hence, the expression "noscitur sociis" collectively means, "to know from the association". There is an English saying that- "Judge a person by the company he keeps". (practically speaking, we cannot have good impression and trust a person, who is always seen in bad companions. Similarly, any young girl, who is seen very often along with a prostitute). The courts, while interpreting a statute may come across a doubtful word. In order to arrive at the clear and real meaning of the doubtful word, the courts may resort to refer the meaning of the other words associated with the said doubtful word. In simple words, the meaning of a doubtful word may be ascertained by a reference to the meaning of words associated with it".

The rule that a word is known by the company it keeps, is not an ineluctable rule. It is applied wisely only, where a word is capable of many meanings.

The rule of construction *'noscitur a sociis' as* explained by Lord Macmillan means, "The meaning of a word is to be judged by the company it keep". As stated by the *privy Council, in Angus Robertson vs. George Day,* [(1879) 5 AC 63]: "it is a legitimate rule of construction to construe word in an Act of parliament with reference to word found in immediate connection with them.

"The rule Noscitur a Sociis has been explained by Gajendragadkar, J. in the following words:

"This rule, according to Maxwell, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognatesense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in 'words and phrases'. Associated words take their meaning from one another under the doctrine of *noscitur a sociis, the* philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it.

The rule that a word is known by its company it keeps is not an ineluctable rule. It is applied wisely only where a word is capable of many meanings so that giving an unintended breadth to a statute may be avoided. When, however, the meaning of the word-even wide words-are clear and unambiguous, this rule cannot be pressed into service.

If the object and scope of the statute are considered there would be no difficulty in holding that relevant words of wide import have been deliberately used by the legislature in defining 'industry', so as to include the employers in the present case."

In *Devendra M. Surti (DR.) vs. State of Gujarat,* [AIR 1969 SC 63], while dealing with the definition of commercial established in section 2(4) of the Bombay shop and Establishment Act, 1948, which reads 'commercial establishment 'means an establishment which carries on any business ,trade or profession', the word 'profession' was construed with the associated words 'business 'and 'trade' and it was held that a private dispensary of a doctor was not within the definition of commercial establishment.

In *Pradeep Agarbatti Ludhiana vs. State of Punjab,* [AIR 1998 SC 171], the word 'perfumery' had to be interpreted in entry 16 of Schedule A of the Punjab General Sales Tax Act, 1948 which read 'cosetics, perfumery and toilet goods, excluding tooth paste, toothpaste, tooth powder, kumkum and soap'. Applying the *noscitur a sociis* rule the supreme court ruled that the word could mean only such articles as are used as cosmetics and toilet goods and therefore, this cannot mean 'dhoop' and 'Agarbathi'.

10. Ejusdem Generis *(of the same kind)* : The maxim 'ejusdem generis' means "of the same kind *i.e.* the same kind or nature". It provides that, where words of specific meaning are followed by general words, the general words will be construed as being limited to persons or things of the same general kind or class as those enumerated by the specific words. The rule of ejusdem generis restricts the meaning of gencral words to thing or matters of the same kind as the preceding particular words.

The rule 'ejusdem generis' is also known as 'Load Tenderen's rule' For example, in the expression "bread, butter,

jam etc." a series of word are used which are edibles. Therefore, they constitute one genus. Here the word 'etc.' is a general word. It may carry any meaning but restricted to edibles only. Thus, 'etc.'. Here may mean 'biscuit' or 'cake' since they are also edibles but it cannot mean an 'apple'.

The doctrine of ejusdem generis is a well-established rule of legislation. It must be applied with great caution, because, it implies a departure from the natural meaning of words, in order to give them a meaning on a supposed intention of the legislation. The rule must be controlled by the fundamental rule that statutes must be construed so as to carry out the object sought to be accomplished

The rule of ejusdem generis apples when:

(i) the statute contain an enumeration of specific words;

(ii) the subject of enumeration constitute a class or category;

(iii) that class or category is not exhausted by the enumeration;

(iv) the general terms follow the enumeration; and

(v) there is no indication of different legislative intent.

In the old English case of *Evans vs. Cross,* [(1983) 1 KB 694] the words 'other devices' had to be interpreted in section 48(9) of the Road Traffic Act, 1930 which defined a 'traffic sign' to include 'all signals, warning sign posts direction posts, signs, or other devices'. Applying the rules of *ejusdem generis,* the court has held that a painted white line on a road cannot be called traffic signal because devices are thing which a painted line on road is not.

In *re Latham Deceased,* [(1961) 3 WLR 1154],the word 'or other person' in the expression 'trustee, guardian, committee or other person' in section 8(4) of the Finance Act, 1894 was 'interpreted ejusdem generis' to mean a person in a similar position to a trustee etc. And as such a person who was beneficially interested could not be included within it.

In *Jagdish Chandra Gupta vs Kajaria Traders,* (AIR 1964 SC 1882), *the* supreme court held that" in the expression

books, pamphlets, newspapers and other documents, private letters may not be held included if 'other documents' be interpreted ejusdem generis with what goes before. But in a provision which reads 'newspapers or other documents, likely to convey secrets to the enemy, the words 'other documents' would include document of any kind and would not take their colour from newspapers.

The Ejusdem Generis rule has no application in the following cases according to Francis J.Mc.Caffrey:-

(i) Where a general term is followed by another general term;

(ii) When particular and specific terms exhaust the whole genus, then the general word are construed as embracing a larger genus;

(iii) Where specifically enumerated objects are essentially diverse in character; and

(iv) Where the contrary legislative intent is plain - such intent being gathered from recognized sources of assistance/aids to construction.

LECTURE VI

RULE OF CONSTRUCTION UNDER THE GENERAL CLAUSES ACT, 1897

INTRODUCTION

This Bill does not propose to effect any change in the law. Its object, like that of the Acts it consolidates, is to shorten the language of the statutory enactments and to provide for uniformity of expression is cases where there is identity of subject-matter.

The first enactment of the kind was Lord Brougham's Act (13 of 14 Vict., c. 21). The provisions of that statute were adopted to India, and somewhat amplified, by General Clauses Act (1 of 1868), and the General Clauses Act (1 of 1887) was a further extensionof the same principle. It is obviously expedient that the legislative dictionary, as it may be called, should be contained in a single enactment, and that the two Acts above referred to should be consolidated, and it seems desirable to take the opportunity of making any additions that later experience may have suggested, and in particular to incorporate such provisions of the Interpretation Act, 1889 (52 and 53 Vict., c. 63), as are applicable to India. That Statute, like the Indian Act of 1887, was drafted by Sir C. Ilbert, and is in effect a careful revision and extension of the latter. For example, the definition of "British India" in the English Act of 1889 is merely an expansion of the definition given by the Indian Act of 1868. Its legal effect is the same, but it is more intelligible, and it avoids a reference to another Statute. Now this definition is substituted by A.O. The proposed measure will have this further advantag that it will tned to secure unifomity of language and construction in Indian and English Legislation, in so far as both have to deal with the same subject-matter.

I. General

(1) Definitions (Section 3)

In this Act, and in all General Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context.-

(1) *"abet"*, with is grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860);

(2) *"act"*, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

(3) *"affidavit"* shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

(4) *"barrister"* shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland:

(5) *"British India"* shall mean, as prospects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominion which were for the time being governed by His Majesty through the Governor-General of India, or through any Governor or officer subordinate to the Governor-General of India , and as respects any period after that date and before the date of the establishment of the Dominion of India means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners" Provinces, except that a reference to British India in an Indian Law passed or made before the commencement of the Government of India Act, 1935, shall not include a reference to Berar;

(6) *"British possession"* shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominsions are under both a central and a local Legislature all parts under the central Legislature shall, for the purposes of this definition, be deemed to be one British possession;

(7) *"Central Act"* shall mean an Act of Parliament, and shall include--

(a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and

(b) an Act made before such commencement by the Governor-General-in-Council or the Governor-General, acting in a legislative capacity;

(8) *"Central Government"* shall,--

(a) in relation to anything done before the commencement of the Constitution, mean the Governor-General or the Governor-General-in-Council, as the case may be; and shall include,-

(i) in relation to functions entrusted under sub-section (1) of Section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of Sec. 94 of the said Act ; and

(b) in relation to anything done or to be done after the commencement of the Constitution mean the President; and shall include,--

(i) in relation to functions entrusted under clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

(ii) in relation to the administration of a Part C State (before the commencement of the Constitution (seventh Amendment) Act, 1956), the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution as the case may be; and

(iii) in relation to the administration of a Union territory the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution;

(9) *"Chapter"* shall mean a Chapter of the Act or Regulation in which the word occurs ;

(10) *"Chief Controlling Revenue Authority"*, or *"Chief Revenue authority"* shall mean--

(a) in a State where there is a Board of Revenue, the Board;

(b) in a State where there is Revenue Commissioner, that Commissioner ;

(c) in Punjab, the Financial commissioner; and

(d) elsewhere, such authority as in relation to matters enumerated in List I in the Seventh Schedule to the Constitution, the Central Government, and in relation to other matters, the State Government, may, by notification in the Official Gazette, appoint ;

(11) *"Collector"* shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district;

(12) *"Colony"*--

(a) in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, shall mean any part of His Majesty's dominions exclusive of the British Islands, the Dominions of India and Pakistan (and before the establishment of those Dominions, British India), any Dominion as defined in the Statute of Westminister, 1931) any Province or State forming part of any of the said Dominions, and British Burma; and

(b) in any Central Act passed before the commencement of Part III of the said Act, mean any part of His Majesty's dominions exclusive of the British Islands and of British India;

and in either case where parts of those dominions are under both a Central and local Legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one colony;

(13) *"commencement"* used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force ;

(14) *"Commissioner"* shall mean the chief officer in charge of the revenue-administration of a division ;

(15) *"Constitution"*, shall mean the Constitution of India

(16) *"Consular officer"* shall include consul-general, consul, vice-counsel, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent;

(17) *"District Judge"* shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

(18) *"document"* shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter ;

(19) *"enactment"* shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid;

(20) *"father"*, in the case of any one whose personal law permits adoption, shall include an adoptive father;

(21) *"financial year"* shall mean the year commencing on the first day of April ;

(22) a thing shall be deemed to be done in "good faith", where it is in fact done honestly, whether it is done negligently or not ;

(23) *"Government"* or *"the Government"*, shall include both the Central Government and any State Government;

(24) *"Government securities"* shall mean securities of the Central Government, or of any State Government but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B State ;

(25) *"High Court"*, used with reference to civil proceedings shall mean the highest Civil Court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates ;

(26) *"immovable property"* shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

(27) *"imprisonment"* shall mean imprisonment of either description as defined in the Indian Penal Code ;

(28) *"India"* shall mean,--

(a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas;

(b) as respects any period after the establish-ment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and

(c) as respect any period after the commence-ment of the Constitution, all territories for the time being comprised in the territory of India;

(29) *"Indian law"* shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which befor the commencement of the Constitution had the force of law in any Province of India or part thereof, or thereafter, has the force of law in any Part A State or Part C state or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act ;

(30) *"Indian State"* shall mean any territory which the Central Government recognised as such a State before the commencement of the Constitution2, whether described as a State, in Estate, a Jagir or otherwise ;

(31) *"local authority"* shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control of management of a municipal or local fund :

(32) *"Magistrate"* shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force ;

(33) *"master"*, used with reference to a ship, shall mean any person (except a pilot or harbour-matter) having for the time being control or charge of the ship ;

(34) *"merged territories"* shall mean the territories which by virtue of an order made under Section 290-A of the Governmcnt of India Act, 1935, were immediately before the commencement of the Constitution being administered as if they formed part of a Governor's Province or as if they were a Chief Commissioner's Province ;

(35) *"month"*, shall mean a month reckoned according to the British calender ;

(36) *"movable property"*, shall mean property of every description, except immovable property ;

(37) *"oath"* shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing ;

(38) *"offence"* shall mean any act or omission made punishable by any law for the time being in force ;

(39) *"Official Gazette"* or *"Gazette"* shall mean the Gazette of India or the Official Gazette of a State ;

(40) *"Part"* shall mean a Part of the Act or Regulation in which the word occurs ;

(41) *"Part A State"* shall mean a State for the time being specified in Part A of the First Schedule to the Constitution 1[as in force before the Constitution (Seventh Amendment) Act, 1956] "Part B State" shall mean a State for the time being specified in Part B of that Schedule and "Part C State" shall mean a State for the time being specified in Part C of that Schedule or a territory for the time being administered by the President under the provisions of Article 243 of the Constitution;

(42) *"person"* shall include any company or association or body of individuals, whether incorporated or not ;

(43) *"Political Agent"* shall mean,--

(a) in relation to any territory outside India, the Principal Officer, by whatever name called, representing the Central Government in such territory ; and

(b) in relation to any territory within India to which the Act or Regulation containing the expression does not extend, any officer appointed by the Central Government to exercise all or any of the powers of a Political Agent under that Act or Regulation ;

(44) *"Presidency-town"* shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be ;

45) *"Province"* shall mean a Presidency, a Governor's Province, a Lieutenant Governor's Province or a Chief Commissioner's Province;

(46) *"Provincial Act"* shall mean an Act made by the Governor-in-Council, Lieutenant Governor-in-Council or Chief Commissioner in Council of a Province under any of the Indian Councils Acts or the Government of India Act, 1915, or an Act made by the local legislature or the Governor of a Province under the Government of India Act, or an Act made by the Provincial Legislature or Governor of a Province or the Coorg Legislative Council under the Government of India Act, 1935;

(47) *"Provincial Government"* shall mean, as respects anything done before the Commencement of the Constitution1, the authority or person authorized at the relevant date to administer executive government in the Province in question ;

(48) *"public nuisance"*, shall mean a public nuisance as defined in the Indian Penal Code (45 of 1860) ;

(49) *"registered"*, used with reference to a document, shall mean registered in India under the law for the time being in force for the registration of documents ;

(50) *"Regultion"* shall mean a Regulation made by the President under Article 240 of the Constitution and shall include Regulation made by the President under Article 243 thereof and a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935;

(51) *"rule"* shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment ;

(52) *"schedule"* shall mean a schedule to the Act or Regulation in which the word occurs ;

(53) *"Scheduled District"* shall mean a Scheduled District as defined in the Scheduled Districts Act, 1874;

(54) *"section"* shall mean a section of the Act or Regulation in which the word occurs ;

(55) *"ship"* shall include every description of vessel used in navigation not exclusively propelled by oars ;

(56) *"sign"*, with its grammatical variations and cognate expression, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions ;

(57) *"son"*, in the case of any one whose personal law permits adoption, shall include an adopted son ;

(58) *"State"*,--

(a) as respects any period before the commencement of the Constitution (Seventh amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State ; and

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory];

(59) *"State Act"* shall mean an Act passed by the Legislature of a State established or continued by the Constitution ;

(60) *"State Government"*,--

(a) as respects anything done before the commence-ment of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorized at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government;

(b) as respects anything done after the commencement of the Constitution and before the

commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean, in a Part A State, the Governor, in a Part B State, Rajpramukh, and in a Part C State, the Central Government ;

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 19562, shall mean, in a State, the Governor,

and in a Union territory, the Central Government ; and shall, in relation to functions entrusted under Article 253A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article ;

(61) *"sub-section"* shall mean a sub-section of the section in which the word occurs ;

(62) *"swear"*, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing ;

(62A) *"Union territory"* shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule;]

(63) *"vessel"* shall include any ship or boat or any other description of vessel used in navigation ;

(64) *"will"* shall include a codicil and every writing making a voluntary posthumous disposition of property ;

(65) expressions referring to *"writing"* shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form ; and

(66) *"year"* shall mean a year reckoned according to the British calendar.

CASE LAW

Before any definition in General Clauses Act is applied it has to be examined whether with use of this definition there appears to be any repugnancy to the subject and the context

of Act concerned. *Director, Central Glass Ceramic Research Institute vs. Sumilon Pal,* AIR 2008 Cal. 251; Lakhi Barua vs. U.O.I., AIR 2008 Cal. 59.

Custom may be used for proving the ingredients of an offence. *Dr. Surajmani Stella Kajur vs. Durga Charan Hansalah,* 2001 (1) Crimes 263 (SC).

In *Shibu Chandra Dhar vs. Pasupati Nath Auddya,* AIR 2002 SC 1252 it was held that a conjoint reading of Section 17 (2A) and (2B) along with Sections 17A to 17D of the W.B. Tenancy Act 1956, makes it very clear that the word "shall" used in all these sections, necessarily means "may".

Where an application in required to be supported by an affidavit, the sworn affidavit has to be drawn up at the foot of the application. [AIR 1981 SC 1113 : (1981) 3 SCC 36].

Expression "Central Act" is confined to legislation and does not cover an order passed by the Central Government. [1966 All. LJ. (D.B)].

The "Central Government" means the president; a representation addressed to the president must, therefore, be considered to be the representation properly addressed to the Central Government. [AIR 1986 SC 356 : 1986 Cri. LJ. 493].

The words *"commencement of the Act"* must be interpreted to mean the date on which the Act became applicable to a particular area and not the date on which the Act was deemed to have come into force. [AIR 1953 All. 686 (D.B)].

The real nature of a document or the transaction thereunder, has to be determined from the ultimate effect or result of all the terms and clauses of the document and all the rights and results flowing therefrom and not by picking and choosing certain clauses. [AIR 1985 SC 1293].

Enactment means an Act made by the legislature or a part thereof. [AIR 1968 SC 102].

The English maxim "Quic quid insoldiricature solo solo credit," meaning whatever is affixed to the soil belongs to the soil, is in-applicable to India. [AIR 1990 Mad. 251].

Neither God nor any supernatural being can be person in law but Hindu Dity can figure as legal person. [AIR 1969 SC 1080].

Under the General Clauses Act "Son" includes only the adopted son and it does not include illegitimate sons. [1994 MPLJ 446].

(2) Application of foreging definitions to previous enactments (Section 4) :--(1) The definitions in Section 3 of the following words and expressions, that is to say, "affidavit" "barrister", "District Judge", "father", "immovable property", "imprison-ment", "Magistrate", "month", "movable property", "oath", "person", "section", "son", "swear", "will", and "year" apply also, unless there is anything repugnant in the subject or context, to all Central Acts made after the third day of a January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(1) The definitions in the said section of the following words and expressions, that is to say, "abet", "chapter", "commencement", "financial year", "local authority", "master", "offence", "part", "public nuisance", "registered", "schedule", "ship", "sign", "sub-section" and "writing" apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

3. Application of certain definitions to Indian Laws (Section 4A) :--(1) The definitions in Section 3 of the expressions "British India", "Central Act", "Central Government", "Chief Controlling Revenue Authority" "Chief Revenue Authority", "Constitution", "Gazette", "Government", "Government securities", "High Court", "India", "Indian Law", "Indian State", "merged territories", "Official Gazette", "Part A State", "Part B State", "Part C State", "Provincial Government", "State", and "State Government" shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

(2) In any Indian law, references, by whatever form of words, to revenues of the Central Government or of any State Government shall, on and from the first day of April 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be.

III. General Rules of Construction

(1) Coming into operation of enactments (Section 5) :--(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,--

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) In the case of an Act of Parliament, of the President.

(2) [Omitted by A.O. 1950].

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

CASE LAW

All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. *Anil Kumar Goel vs. Kishan Chand Kaura,* AIR 2008 SC 899.

(2) Effect of repeal (Section 6)

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect ; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforce, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

CASE LAW

Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. *Jharkhand SEB vs. Laxmi Business and Cement Co. (P) Ltd.*, 2014 (5) SCC 236.

See also :--*State of Punjab vs. Mohar Singh*, AIR 1955 SC 84; *HPSERC vs. HPSEB*, 2014 (5) SCC 219.

The question as to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier decision and other relevant circumstances. *Nagpur Improvement Trust vs. Vasantrao*, AIR 2002 SC 3499.

See also :--(1) *M/s. Kanthi Enterprises vs. State of Karnataka*, AIR 2002 SC 3227. (2) *Jagan M. Seshadri vs. State of T.N.*, AIR 2002 SC 2399. (3) *Appellate Authority Transport Commissioner and others vs. Divisional Manager, M.P. Rajya Parivahan Nigam*, AIR 2008 (NOC) 1380 (M.P.). (4) *H.H.M. Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel*, AIR 2001 SC 1462. (5) *Syndicate Bank vs. Prabha D. Naik*, AIR 2001 SC 1968. (6) *Amjadali Gazanfarali Bhakhari vs. The Custodian of Evacuee Properties*, AIR 2008 (NOC) 731 (Guj.).

The doctrine of implied repeal is based on the theory that the Legislature , which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal, "unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is necessary inconsistency in the two Acts standing together." *State of M.P. vs. Kedia Leather and Liquor Ltd.*, AIR 2003 SC 3236.

See also :-(1) *Ratanlal Adukia and another vs. Union of India,* AIR 1990 SC 104. (2) *Municipal Corporation of Delhi vs. Shiv Shanker,* 1971 (1) SCC 442.

The absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent. *N.A. Coop. Mktg. Fedn. of India Ltd. vs. Union of India,* AIR 2003 SC 1329 = AIR 2003 SCW 1743 = 2003 (5) SCC 23 = 2003 (3) Scale 414 = 2002 (3) Supreme 617.

See also :-(1) *S.S. Gadgil vs. M/s. Lal and Co.,* AIR 1965 SC 171. (2) *Rai Ramakrishna and others State of Bihar,* 1964 (1) SCR 897. (3) *Supreme Court Employees Welfare Association vs. Union of India and another,* 1989 (3) SCC 488 = AIR 1990 SC 334 = 1989 (3) SCR 488.

Rights which have accrued are saved unless they are taken away expressly. *H.H.M. Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel,* AIR 2001 SC 1462.

In a case where a particular provision in the statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall continue but a fresh proceeding for the same purpose may be initiated under the new provision. *Shiv Shakti Co-op. Housing Society vs. Swaraj Developers,* AIR 2003 SC 2434 = 2003 AIR SCW 2445 = 2003 (6) SCC 659 = 2003 (4) Scale 241 = 2003 (3) Supreme 729.

An Act passed by Parliament becomes operative in states by virtue of the adoption of that Act by means of a resolution passed by the Legislature of the State, the repeal will be effective only if that state passed another resolution approving and adopting the repealing Act. *State of West Bengal vs. Pronab Kr. Sur,* AIR 2003 SC 2313.

In Re : Wood's Estate, Ex parte, Works and Buildings Commissioners, (1886) 31 Ch. D. 607 Lord Esher, M.R. observed "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections in the new Act as if they had been actually written in it with pen, or printed in it."

See also :-(1) *Mary Roy vs. State of Kerala,* 1986 (2) SCC 209. (2) *Ramsarup vs. Munshi,* AIR 1963 SC 553.

An 'omission' of a provision is different from a repeal' and section 6 of the Act applies to a repealed law and not to

omission. *Kolhapur Canesugar Works Ltd. vs. Union of India,* 2002 (2) SCC 536 = AIR 2000 SC 811 = 2002 AIR SCW 364.

See also :-(1) *M/s. Rayala Corporation (P) Ltd. and M.R. Pratap vs. Director of Enforcement,* AIR 1970 SC 494 = 1970 Cri.LJ 588 = 1969 (2) SCC 412. (2) *M/s. General Finance Co. vs. Assistant I.T. Commissioner Punjab,* AIR 2002 SC 3126 = 2002 AIR SCW 3605 = 2007 (7) SCC 1 = 2002 (6) Scale 198 = 2002 (6) Supreme 116.

(3) Repeal of Act making textual amendment in Act or Regulation Section 6A) :--Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

(4) Revival of repealed enactments (Section 7) :--(1) In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(5) Construction of references to repealed enactments (Section 8) :--(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

CASE LAW

A subordinate legislation in the form of Rule or Notification could not be made/unmade retrospectively unless any power in that regard has been specifically conferred upon the Rule-making Authority, a mere retrospective deletion could not per se have the effect of nullifying or destroying orders passed or acts already performed, when such powers were available in the absence of any specific statutory provision enacted to destroy all such rights already acquired or obligation and liabilities incurred. *M/s. Sikkim Subha Associates vs. State of Sikkim,* AIR 2001 SC 2062 = 2001 AIR SCW 1868 = 2001 (5) SCC 629 = 2001 (3) Scale 721.

See also :-(1) *Gauri Shankar Gaur vs. State of U.P.,* AIR 1994 SC 169. (2) *National Sewing Thread Co. Ltd., vs. James Chadwick and Bros. Ltd.,* 1953 SCJ 509 = AIR 1953 SC 357 = 1953 SCR 1028. (3) *Girnar Traders vs. State of Maharashtra,* AIR 2007 SC 3180 = 2007 AIR SCW 5782 = 2007 (7) SCC 555 = 2007 (10) Scale 391. (4) *State of Punjab vs. Sukh Deb Sarup Gupta,* 1970 SCD 849 = AIR 1970 SC 1641 = 1971 (1) SCR 442 = 1970 (2) SCC 177. (5) *Mahindra and Mahindra Ltd. vs. The Union of India,* 1979 (2) SCC 529 = AIR 1979 SC 798 = 1979 (2) SCR 1038. (6) *Prahald Sharma vs. State of U.P.,* AIR 2004 SC 2705.

(6) Commencement and termination of time (Section 9) :--(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "or".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all regulations made on or after the fourteenth day of January, 1887.

CASE LAW

(1) *Rajeev Chakraborty vs. Golaghat Truck Owners Association,* AIR 2008 (NOC) 1000 (Gau.). (2) *K.C. Bohra vs. Durga Lodge Pvt. Ltd.,* AIR 2008 (NOC) 2545 (Mad.).

(7) Computation of time (Section 10) :--(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or

office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, (15 of 1877) applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

CASE LAW

(1) *I.C.I.C. Bank Ltd., Mumbai vs. Tata International Ltd. Mumbai,* AIR 2008 (NOC) 2770 (Bom.) = 2008 (5) AIR Bom.R 243. (2) *Satya Narayan vs. Additional Commissioner,* AIR 2008 (NOC) 1032 (M.P.).

A party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity. *Sambasiva Chari vs. Ramaswami Reddi,* 1898 (8) Mad.Law Journal 265. Law does not compel the performance of an impossibility. *Hossein Ally vs. Donzelle,* ILR 5 Calcutta 906.

See also :--*HUDA vs. Dr. Babeswar Kanhar,* 2005 (2) Civil.LJ 429 (SC).

Computation of time as laid down in Section 10 (1) applies to all the Central Acts and Regulations in view of sub-section 2. Therefore if the office is closed on the last day of prescribed period, any act done on the next working day shall be deemed to have been done in due time. (1995) 1 An. LT. 44 (DB).

(8) Measurement of distances (Section 11) :--In the measure-ment of distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal place.

(9) Duty to be taken *pro rata* in enactments (Section 12) :--Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, than a like duty is leviable according to the same rate on any greater or less quantity.

(10) Gender and number Section (13) :--In all Central Acts and Regulations, unless there is anything repugnant in the subject or context--

(1) words importing the masculine gender shall be taken to include females ; and

(2) words in the sigular shall include the plural, and vice versa.

CASE LAW

(1) *M.T. Khan vs. Government of A.P.,* AIR 2004 SC 2934. (2) *Sawan Ram vs. Mst. Kalawati,* 1967 (3) SCR 687 = AIR 1967 SC 1761. (3) *Chiranjilal Srilal Goenka (dead) by LRs. vs. Jasjit Singh,* 2001 (1) SCCD 486 = AIR 2001 SC 266 = 2000 (8) Supreme 137.

Powers and Functionaris

(1) Powers conferred to be exercisable from time to time (Section 14) :--(1) Where, by any (Central Act) or Regulation made after the commencement of this Act, any power is conferred then, unless a different intention appears, that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

CASE LAW

Meaning of the expression "from time to time" used inthe section with respect of delegated legislation. *State of Rajasthan vs. Basant Agrotech (India) Ltd.,* 2013 (15) SCC 1 = AIR 2014 SC 487.

M/s. Indian Charge Chrome Ltd. vs. Union of India, AIR 2003 SC 953 = 2003 AIR SCW 440 = 2003 (2) SCC 533 = 2002 (9) Scale 428 = 2003 (1) Supreme 17.

(2) Power to appoint to include power to appoint ex-officio (Section 15) :--Where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

(3) Power to appoint to include power to suspend or dismiss (Section 16) :--Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

(4) Substitution of functionaries (Section 17) :--(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(5) Successors (Section 18) :--(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functiona-ries or corporations.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all regulations made on or after the fourteenth day of January, 1887.

(6) Official chiefs and subordinates (Section 19) :--(1) In any Central Acts or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties that office the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

V. Provisions as to Orders, Rules, etc., made under enactments

(1) Construction of notifications, etc., issued under enactments (Section 20) :--Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order, scheme, rule form or bye-law, if it is made after the commencement of this Act, shall unless there is any thing repugnant in the subject or context, have the same respective meanings as in he Act or Regulation conferring the power.

(2) Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws (Section 21) :--Where, by any Central Act or Regulation, a power to issue notifications orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued.

CASE LAW

Power under Section 21 *vis-a-vis* political change. See *J. Jayalalitha vs. State of Karnataka,* 2014 (2) SCC 401 = 2014 (134) AIC 139.

Section 21 of the Act has no application where a statutory authority is required to act quasi-judicially. *Indian National Congress (I) vs. Institute of Social Welfare,* AIR 2002 SC 2158 = 2002 (5) SCC 658.

See also :--*Poonam Verma vs. Delhi Development Authority,* AIR 2008 SC 870.

(3) Making of rules or bye-laws and issuing of orders between passing and commencement of enactment (Section 22) :--Where, by any Central Act or regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the act or Regulation, then that power may be

exercised at anytime after the passing of the Act or Regulation ; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or regulation.

CASE LAW

Chandra Singh vs. State of Rajasthan, AIR 2003 SC 2889.

(4) Provisions applicable to making of rules or bye-laws after previous publication (Section 23) :--Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely :--

(1) the authority having power to make the rules or bye-laws shall before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby ;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which a may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified ;

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

(5) Constitution of orders, etc., issued under enactments repealed and re-enacted (Section 24) :--Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment notification, order, scheme, rule, form or bye-

law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provision re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment notification, order, scheme, rule, former bye-law made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under Section 5 or 5A or the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

VI. Miscellaneous

(1) Recovery of fines (Section 25) :--Sections 63 to 70 of the Indian Penal Code (45 of 1860) and the provisions of the Code of Criminal Procedure (5 of 1898) for the time being in force in relation to the issue and the execution of warrants for the levy of fine shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.

(2) Provision as to offences punishable under two or more enactments (Section 26) :--Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to the prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

(3) Meaning of service by post (Section 27) :--Where any Central Act or regulation made after the commence-ment of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expression "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effect at the time at which the letter would be delivered in the ordinary course of post.

CASE LAW

Presumption as to service of notice : *Ajeet Seeds Ltd. vs. K. Gopalakrishmaiah,* 2014 (12) SCC 685 = 2014 (141) AIC 125.

Notice sent to the holder of the vacant land at his given address by registered post acknowledgement due, then the service thereof will be deemed to have been duly effected unless the contrary is proved by the addressee. *C. Veerappa vs. Chief Comm. Land Administration,* 2008 (2) Civil.LJ 475.

See also :--(1) *Harcharan Singh vs. Shivrani,* 1981 (2) SCC 535. (2) *K. Bhaskaran vs. Sankaran Vaidhyan,* 1997 (7) SCC 510 = 1999 AIR SCW 3809 = AIR 1999 SC 3762 = 1999 Cri.LJ 4606. (3) *V. Raja Kumari vs. P. Subbarama Naidu,* 2004 (8) SCC 774 = 2004 AIR SCW 6344 = AIR 2005 SC 109 = 2005 Cri.LJ 127. (4) *Prafulla Kumar Mohanty vs. Akshya Kumar Biswal,* AIR 2009 (NOC) 2577 (Ori.). (5) *Hari Gopal vs. Vijay Kumar and others,* AIR 2008 (NOC) 333 (All.) = 2007 (6) ALJ 573. (6) *Amit Yadav vs. State of U.P. and another,* AIR 2008 (NOC) 2539 (All.) = 2008 (4) ALJ 480. (7) *V. Satyanarayana Raju vs. G.B. Gangadhara Reddy,* 2008 (NOC) 992 (A.P.). (3) *Basant Singh vs. Raman Catholic Mission,* AIR 2002 SC 3557.

(4) Citation of enactments (Section 28) :--(1) In any Central Act or Regulation, and in any rule, bye-law, instrument or document, made, under, or with reference to, any such act or regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Central Act or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

(5) Saving for previous enactments, rules and bye-laws (Section 29) :--The provisions of this Act respecting the construction of Acts, regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, regulation, rule or bye law made before the commencement of this Act, although the Act, Regulation, rule

or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

(6) Application of Act to Ordinance (Section 30) :-- In this Act the expression Central Act wherever it occurs, except in Section 5, and the word "Act" in clauses (9), (13), (25), (40), (43), (52) and (54) of Section 3 and in Section 25 shall be deemed to include an Ordinance made and promulgated by the Governor General under Section 23 of the Indian Councils Act, 1861 or Section 72 of the Government of India Act, 1915 or Section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under Article 123 of the Constitution].

LECTURE VII

BASIC RULES OF INTERPRETATION

SYNOPSIS

The basic rules of interpretation are studied under the following heads:

1. Grammatical or Literal Rule of Interpretation
2. Golden (or British Rule) of Interpretation and
3. Mischief Rule of Interpretation or the Rule of Interpretation to avoid Mischief.

* * * * *

This lecture deals with the grammatical or Literal Rule of Interpretation, while the Golden rule of Interpretation and the Mischief Rule of Interpretation are discussed separately in Lectures VIII and IX respectively.

1. Grammatical or Literal Rule of Interpretation :-- One of the basic principles of interpretation of statute is Grammatical Interpretation. It is also known as Literal or Primary or Natural or Popular Interpretation.

The rule of grammatical (literal) construction is considered to be the first principle of interpretation According to this rule, the words of an enactment are to be given their ordinary and natural meaning, if the meaning of the words is clear and unambiguous, effect should be given to a provision in a statute, whatever may be the consequences. In simple words, according to the literal rule of interpretation, the courts (judges) should acknowledge the words in a provision of a statute, if they are clear and unambiguous and effect should be given, whatever may be the consequences .The principle of literal construction is applied, where the wording of a statute is absolutely clear and unambiguous .

When the application of literal construction results in some absurdity or anomaly the court (judge) may resort to apply other principle of construction. But ,the court normally would not depart from the literal rule. In other words, the rule of grammatical interpretation (literal construction) postulates that, it is the duty of the court to expound the law as it stands, not to modify, or alter or qualify its language.

It is an elementary principle of interpretation that the plain intention of the legislature as expressed by the language is to be accepted and given effect to. This rule is taken as basis of all court decisions in relation to the statutes .According to this rule, the court (Judge) should rely on the exact wording used in the statute and cannot modify the language in order to bring it accordance with his own view as to what is right and reasonable. In case of grammatical interpretation, only the verbal expression of law is taken in to consideration .So ,the court/judges must strictly follow the language used in the statute intact and should not beyond the letters of law (Literal Legis). Further, the judge should not add anything to it on the ground that the true 'sententia Legis' is not completely or correctly expressed in the words. This principle has been recognised by the Roman Jurists.

Brett M.R. called the literal rule as a 'cardinal rule' that "wherever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the word, but according to the ordinary meaning of the word as applied to the subject-matter with regard to which they are used." Or inconsistency with the rest of the instrument in which the case grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further."

Lord Brougham says, "The construction of an Act must be taken from the bare word of the Act. We cannot fish out what possibly may have been the intention of the Legislature. We cannot aid the Legislature's defective phrasing of the statute. We cannot add and mend and by construction make up deficiencies which are left there. And, therefore, if any other meaning was intended than that which the word purport plainly to import, than let another Act."

The term 'grammatical construction' was used by Salmond. He explains "Interpretation is of two kinds, which may be distinguished as 'literal' and 'functional'. The literal interpretation is that which regards exclusively the verbal expression of the law. It does not look beyond the *'literal legis'* (letter of law). Free interpretation, on the other hand, is that which departs from the letter of the law , and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature .It is essential to determine with

accuracy the relation which subsists between these two methods in other words, we have to determine the relative claims of the 'letter' and 'spirit' (legislative intent and, object of statute) of enacted law."

The rule of literal construction is applicable both to the private law and public law (*State of H.P. vs. Surinder Singh Banolta,* (2006) 12 SCC 484.

The rule of literal construction (Grammatical /Literal rule of interpretation) can be easily understood with reference to the following heads-

This rule can be easily understood under the following headings.

1. Natural or grammatical or popular meaning.
2. Explanation.
3. Exact meaning, preferred to lose meaning
4. Technical word in technical sense.

(i) Natural and Grammatical or Popular Meaning : While applying the principle of grammatical/literal construction, the words in a statute are to be understood first in their ordinary, natural and popular sense. Then the phrases and sentences are construed in accordance with the grammatical meaning, unless it leads to some absurdity or something contrary in the context. Statutes must be construed according to plain, literal and grammatical meaning of words .In case of inconsistency, absurdity or repugnancy, the grammatical sense, then has to be modified or extended or abridged to avoid such inconvenience due to consistency/ absurdity.

Where the words are clear and there is no ambiguity or obscurity, the intention of the legislature can be clearly conveyed. Then there is no need to the court to innovate or amend/alter the provision of the statute. The rules of interpretation do not permit court to add or amend by construction make to up deficiencies, unless the provision as it stands is meaningless.

The Supreme Court has held that the principle of ironing out the creases does not justify rewiring a clause or doing violence to its language. Grammatical constructions leading

to absurdity or injustice is to be avoided only if language admits of such constructions.

In *Kannailal Sur Vs Paramnidhi Sadhu Khan,* (AIR 1957 SC 97) Gajendragadkar.j, said that "if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of Act"

In *Municipal Board vs. State Transport Authority Rajasthan,* (AIR 1965 SC 458), the National Transport Authority had changed the location of bus stand .If anyone wants to move the application against this order, he could do so within 30 days from the date order to the Regional Transport Authority under Sec. 64A of the M.V. Act, 1939. But in this case, the application was moved to the sate transport authority after the expiry of the date of the order. It was argued that the application could be moved within 30 days from the knowledge of the order of the R.T.A.

The Supreme Court held that whenever language of a statute is plain and unambiguous, meaning should be given to it irrespective of the consequences and while interpreting statute of limitation, equitable considerations are out of place and clear grammatical meaning of the enactment should stand.

In *Ramavatar vs. A.S.T.O.,* (AIR 1961 SC 1325), the question before the court was whether the sale of the betel leaves was subject to sales tax. The contention given by the appellant was that betel leaves being vegetables were not subject to sales tax. The appellant relied on the dictionary meaning of vegetable which says that a vegetable is that which is pertaining to, comprised or consisting or derived or obtained from plant or their parts. The supreme court rejected the contention and held betel leaves could not be given the dictionary or botanical meaning when the ordinary and natural meaning is clear and unambiguous.

(ii) Explanation :--Every word, a part from its ordinary, natural and popular meaning, will have a secondary meaning. The secondary meaning may be technical or scientific but less common than the ordinary meaning .While determining the meaning of a particular word or phase in a statute, the first question that a rises is, what is the ordinary and natural

meaning of that words or phrases in its context in the statute? If the natural or ordinary meaning of that words or phase indicates such result ,not opposed to true intention of the legislature, then we look for some other possible meaning of the word or phrase, which may convey the true intention of the legislature. In simple words, if the ordinary and natural meaning of a word or phrase in a statute does not convey the true intention of the legislature, we shall look for some other meaning ,which can convey the true intention of the legislature .In the process of interpretation of a statute, it is accepted that the natural, ordinary or popular meaning of a word is derived from its context, the distinction drawn between different meanings loses significance.

The Supreme Court in-*Kesavanada Bharati vs. State of Kerala,* (AIR 1973 SC 1461) viewed that-in determining the meaning of any word or phase in a statute, the first question to be asked is, what is the natural or ordinary meaning of the word in its context in the statute."

In *Motipur Zamindary Co Ltd vs. State of Bihar,* (AIR 1962 SC 660) *the* question arose whether the sugarcane fell within the term green vegetables in Entry 6 of the Schedule of Bihar sales Tax Act 1947 for purpose of sales tax. The Supreme Court held that while dealing with a taxing statute the natural and ordinary meaning of a word should be the correct meaning. The word green vegetables in its popular sense includes vegetables that can be grown in the kitchen garden and can be used for eating during lunch or dinner. Therefore, sugarcane does not fall under this category.

Similarly, in constructing the Uttar Pradesh Sales Tax Act, 1948 it was held that tooth powder is a 'toilet requisite' (Sarin *Chemical Lab v Commissioner of Sales Tax U.P.* AIR 1971 SC 65) and powerloom cloth is not 'cloth manufactured by the mills (*Sales Tax Commissioner, U.P. v Ladha Singh Mal Singh,* AIR 1971 SC 65). In Andhra Pradesh general sales tax rules, 1957 the words 'livestock' that is to say all domestic animals, will not include 'chicks' construing in the popular sense although in literal sense animal refers to any and every animate object as

distinct from inanimate object *(Royal Hatcheries Pvt Ltd vs. State of AP* AIR 1994 SC 666).

(iii) Exact meaning preferred to loose meaning : The third important point regarding the rule of literal construction is the exact meaning is preferred to loose the meaning in an act of parliament. In Prithipal Singh v Union of India, (AIR 1982 SC 1413, p 1419, (1982) 3 SCC 140) it was held that there is a presumption that the words are used in an act of parliament correctly and exactly and not loosely and inexactly.

Every word has a secondary meaning too. Therefore, in applying the above stated rule one should be careful not to mix up the secondary meaning with the loose meaning. Loose meaning should not defeat the secondary meaning of a word. Wherever the secondary meaning points to that meaning which statute meant, preference should be given to that secondary meaning.

But preference to secondary meaning does not offend the rule that preference should not be given to loose meaning. Example can be taken of the word 'obtain.' Obtain' in its primary sense requires some request or effort to acquire or get something but in its secondary meaning it means to acquire or get without any qualification and if in a statute the secondary meaning is preferred, it cannot be said that preference has been given to loose meaning.

(iv) Technical Words in Technical sense : It is the fourth important point of the rule of literal construction (grammatical interpretation). In states that, "technical words are understood in the technical sense only .Words used is a statute may be ordinary/common words or technical words. The ordinary words convey ordinary meaning .Where as technical words used in a statute designed to some trade or profession convey special/technical meaning .The technical/ special meaning of such words is familiar in the concerned trade or commercial circles. (In our practical life ,we witness that certain technical words are used by some technical professionals, which they understand easily since the words are quite familiar in that profession).

Lord Esher MR has stated that if the Act is one passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that

trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning (*Union vs. Hanoon,* [1891] 2 QB 115 (CA), p 119).

In *Unwin vs. Hanoon,* (1891) 2 QB 115 (CA)) it was held that the 'waist' or 'the skin' are well known terms applied to a ship nobody thought of their meaning as the waist or skin of a person when are used in an Act of parliament dealing with ships.

When a word acquires a particular meaning in the trade or commercial circles that meaning become the popular meaning in the context and, therefore, that should normally be accepted. Word, entries and items in taxing statutes should be construed in their commercial or trade understanding, or popular meaning .Rigid interpretation in terms of scientific and technical meaning should be avoided. (*CCE vs Connaught Plaza Restaurant (P) Ltd.,(2012) 13 SCC 639).*

The construing the word 'practice' in supreme court Advocate (practice in High Court) Act, 1951 Patanjali Shastri, CJ, observed :

The practice of law in this country generally involves the exercise of both the function of acting and pleading on behalf of a litigant party; accordingly when the legislature confers upon an advocate 'the right to practice' in a court, it is legitimate to understand that expression as authorising him to appear and plead as well as to on behalf of suitors in that court (*Ashwini Kumar Gose vs. Arabinda Bose,* AIR 1952 SC 369, p 373).

In *Union of India v Delhi Cloth & General Mills Co Ltd.,* (AIR 1963 SC 791) the question was of excise duty on 'refined oil', It was held that purification of raw oil in the process of manufacture of vanaspati where deodorisation is done after hydrogenation does not at any stage transform the oil into refined oil as known to the consumers and commercial community because in commercial world oil is always deodorised before it is marketed as refined oil. Here Supreme Court considered the evidence of manufactures of refined oil and the specification of refined oil by the Indian Standards Institution.

Advantages/Merits of the Rule of Literal Construction : Following are the merits of the rule of grammatical or literal interpretation:

(i) When the rule of grammatical interpretation (literal construction) is applied, there is no scope for the judges to express their own opinion pre judices to interfere.

(ii) The rule of literal interpretation respects parliamentary supremacy and upholds *separation of power.*

(iii) The rule of literal interpretation encourages drafting precision, promotes certainty and reduces litigation (The rule/doctrine of separation of power was coined by the French jurist Montisque. According to this doctrine, the three organs/authorities of the Government namely, the Executive, Legislature and Judiciary should discharge their functions independently *i.e.* the executive should discharge the executive functions, the judiciary should discharge the judicial functions and the legislature should discharge the legislative (law making) functions. One organ/authority should not encroach upon/interfere in other functions. That is to say, the executive should not interfere in legislative or judicial function. Similarly the legislature or judiciary).

Demerits or Disadvantages or Limitations of the Rule of Literal Construction/Grammatical Interpretation :--The rule of grammatical interpretation (literal construction) suffers from the following defects.

(i) It fails to recognise that English language used in the statutes, itself is ambiguous and the English words contain different meanings from context to context.

(ii) Application of this rule sometimes leads to absurdities and loop holes, giving room/scope to unmeritorious litigants to exploit the situation.

(iii) Placing emphasis on the literal meaning of words assume an unobtainable perfection in draftmanship.

(iv) The rule of literal construction ignores the limitations of language.

LECTURE - VIII

GOLDEN RULE OF INTERPRETATION

(BRITISH RULE OF INTERPRETATION)

SYNOPSIS

This lecture deals with--

1. Golden Rule : Meaning
2. Golden Rule : Definition
3. Circumstances leading to Application of Golden Rule
4. The Golden Rule of Interpretation in England (English case Law) and
5. The Golden Rule of Interpretation in India (Indian Case Law)

* * * * *

1. Golden Rules Meaning : One of the three basic rules of Interpretation, construction is 'Golden Rule'. (The other two rules are Grammatical/Literal Rule and Mischief Rule) The Golden Rule of Interpretation can be said as the modification of the Grammatical Rule of Interpretation (the Literal Rule of Construction). It is also known as 'British Rule' forth reason; it was originated in England in 1854 and was coined by, C.J in the case of:

Matterson vs. Hart, (1854) 23 LJCP 108 at p. 144) : In this case, the rule, what is called 'Golden Rule 'was applied for interpretation of the Acts of British Parliament viz. to give plain and natural meaning to the words used in the Act by the legislature (Parliament), unless some injustice or absurdity would result from so construing them" (In simple words jervis, c.j British Parliament (Legislative)applied the rule ,what is called 'Golden Rule' by giving the words used by the legislature, their plain and natural meaning ,unless injustice and absurdity would not result from so continuing them). This rule was named as 'Golden Rule' for the reason, it solves all problems. Lord Granworth, LC commanded the Golden Rule and said it is 'cardinal rule'.

Justice Parke B in *Becke v Smith*, (1836)2 M&W 195) said-Golden Rule is very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and to grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such convenience but no further".

In simple words, the courts, while applying the golden rule in construction of a statute, must a here to the ordinary meaning and grammatical construction of the words used. In case, it leads to absurdity, golden rule comes to remove it. Thus, where the rule of grammatical interpretation (literal construction) of a statute leads to absurdity or and unreasonableness, as to make itself evident that legislature could not have meant, what is actually said.

2. Golden Rule: Definition :--There are several definitions Notable among them are given below-

(i) Viscount Simon L.C: According to him, "The golden is that the words of a Statute must prima facie be given their ordinary meaning."

(ii) Lord Atkin: Lord Atkin ,In eminent jurist says, "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used to show that they were used in a special sense different from their ordinary grammatical sense.

(iii) Benerjee: In his "Interpretation of Deeds, Wills and Statutes in British India" Writes: "Golden Rule has been universally accepted as a correct enunciation of the law. In laying down that the ordinary and grammatical sense of the words must be adhered to in the first instance, what is meant is this: Most words have a primary meaning, *i.e.*, a meaning in which they are generally used and a secondary meaning *i.e.*, a particular meaning in which they are used in a particular context."

3. Circumstances leading to Application of Golden Rule :--Golden rule gives the words in a statute, their plain ordinary meaning. If it leads to irrational result that is unlikely to be the legislature's intention, the golden rule dictates that a judge can depart from this meaning .Where a word contains/ conveys more than one meaning, the judge can choose the preferred meaning of his choice. If a word conveys only one meaning and application of the same leads to bad decision, then the judge can apply that word completely different meaning.

The golden rule of interpretation is applied in two ways *i.e.* narrower and wider sense. The rule is applied more frequently in narrower sense, where there is some ambiguity or absurdity in the words themselves in the statute. Secondly, the golden rule is applied in the wider sense, to avoid obnoxious result to the principles of public policy, even where the words in a statute have only one meaning. The rule in second sense was applied in our English Case, *Sigsworth, Re Bedford vs. Bedford,* (1935) Ch. 89)

4. The Golden Rule of Interpretation in England (English Case Law) :--The golden rule was applied in several cases in England .A few of them are stated below-

A Case often cited in support of the golden rule is *River Wear Commissioners vs. Adamson* in which Justice Blackburn used these words:

> "I believe that is not disputed that what Lord Wensleydale used to call the **golden rule** is right viz., that we are to take the whole statute together, and construe it all together, giving the word their ordinary signification, unless when so applied they produce an inconsistency ,or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, which though less proper, is one which the court think the word will bear."

Jugal Krishore vs. Raw Cotton Co. Ltd., (AIR 1955 SC 376 P 381) In this case, the Supreme Court through S.R Das J observed that/the cardinal (golden) rule of interpretation of statutes is to read the statute literally *i.e.* the words used by the legislature in the statute should be given their ordinary,

natural and grammatical meaning In case such reading leads to absurdity or susceptible of another meaning, the court may adopt the ordinary rule of literal (grammatical) construction (interpretation), if alternative construction.

Lee vs. Knapp, (1967) 2 Q.B 442): The question that arose in this case was, within what time, on occurrence of an accident the driver will able to stop vehicle under section 77(1) of the Road Traffic Act, 1960 (England)?

Winn, Loard Justice applying the Golden rule of construction, interpreted the term 'shall shop'. It is to be construed as the driver shall stop it and remain there for such a period of time as per the prevailing circumstances.

Further, the golden rule of construction was applied in England by Lord Parker C.J, to decide the question, whether owner or Manager of a factory is the occupier of a factory under section 155(1) of the Factories Act, 1961 (England) and held the owner as employer, who shall be held liable vicariously for the offence committed by the employee/servant.

5. The Golden Rule of Interpretation in India (India case law) : As stated earlier, according to the golden rule, the courts in order to find out the intention of the legislature from the word used in the statute, give the words, their original and natural meaning. In case, it leads to any absurdity, repugnancy, inconvenience, hardship, injustice or evasion, the courts must modify the meaning of the words in the statute to such an extent so as to prevent the consequences as a result of such absurdity hardship etc. Hence, the Golden rule of Interpretation is a modification in the rule of Grammatical Interpretation (Literal construction). It has been used in several Indian cases. A few of them are detailed below –

The Supreme Court applied the golden rule of interpretation in-

Navinchandra Mafatlal vs C.I.T. Bombay, (1955) 1 SCR 829,836-6): It was 'observed in this case that, the golden rule of interpretation is that, the words should be read as their ordinary natural and grammatical meaning subject to condition that in construing words in a constitution conferring words in a constitution conferring legislative power ,the most liberal construction.

Golaknadh vs. State of Punjab, (AIR 1967 SC 1643) : In this case, the Supreme Court applied the golden rule of interpretation and held that the Parliament cannot amend the constitution affecting /abridging the provisions under Part III (Fundamental Rights) of the constitution (and overruled the earlier decisions in Shankari Prasad's case and Shajjah Singh's case).

In *Tarlochan Dev Sharama vs. State of Punjab,* [AIR 2001 SC 2524], the court interpreted the phrase "abuse of his power" in section 22 of Punjab Municipal Act, 1911 thus: 'Abuse of power' in the context implies a wilful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power.

LECTURE IX

MISCHIEF RULE OF INTERPRETATION

(RULE OF INTERPRETATION TO AVOID MISCHIEF)

SYNOPSIS

This lecture covers the following heads-

1. Mischief Rule
2. Application of Mischief Rule in England (English Case Law)
3. Application of Mischief Rule of Interpretation in India (India Case Law)
4. Advantages/Merits of Mischief Rule and
5. Disadvantages/Demerits of Mischief Rule

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1. Mischief Rule : The third basic rule of interpretation (construction) of statutes is "the Mischief Rule of Interpretation. This rule was laid down by the Lord. Coke *in Re Heydon's Case (1584)* 76 ER 637: (1584) 3 CO Rep.7a). Hence, it is known as 'the rule in Haydon's Case". This rule now attained the status of classic is known as "the Mischief Rule". The Mischief Rule of Interpretation is also called as "Purposive Construction". The Mischief Rule of construction is "that the courts must adopt that construction, which shall suppress the mischief and advance the remedy. This rule is applied, when the meaning of the words in a statute is not plain and clear. The purpose of the rule is to find out the true intention of the legislature by suppressing /removing the ambiguity and mischief. This rule is so called as 'mischief rule' because; it envisages that construction, by which the mischief is suppressed. This rule enables/gives the judges more discretionary power than Grammatical Rule (Literal Construction) and golden rule, as it allows him to decide effectively on Parliament's intent. Hence, it is the duty of the court to make such construction of a statute, which shall suppress the mischief and advance the remedy.

As stated above, the mischief rule is known as Heyden's Rule as it was laid down by Lord Coke in ***Re Heydon's Case.***

Facts of the Case : In 16th century, during the period/ reign of the King Henry VIII, certain lands were the copyholds of a college. The warden and canons the Management of the college granted a part of the land to Wand his son for their lives and the remaining land to S and G at the will of the warden and canons (i.e the management of the college).The warden and canons gave/granted on lease all the land to Heydon for 80 years. This type of alienation of proper in England is called "Doubling of Estates", Later, the warden and canons (the Management) surrendered the college to the king. The Attorney General, on behalf of the crown (king) filed information for obtaining satisfaction in damages for the wrong/mischief committed in the lands against Heydon as an intruder of the lands. The British Parliament passed a statute entitled "Statute-31, Henry VIII" to prevent the doubling of estates and misappropriations of properties belonging to the religious institutions. Accordingly, the transfer/alienation of religious or ecclesiastical house made by a lease of lands for term of years, (in which there was an estate and not determined at the time of the lease) shall be void and hence the Crown cancelled all the previous leases and the properties/lands of the college were taken. Heyden challenged the validity of the statute 31, Henry VIII...

The matter was decided by the court (the Barons of the Exchequer). The court for the first time applied the mischief rule of interpretation and considered the following four things for a just decision of the above case:

1st what was the common law before the making of the Act,

2nd what was the mischief and defect for which the common law did not provide

3rd What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth and,

4th The true reason of the remedy;

And then the office of the judges is always to male such construction as shall suppress the mischief, and advance the

remedy, and to suppress subtle invention, and evasion for continuance of the mischief, and *pro private commodo*, and to add force and life to the cure and remedy according to the intent of the makers of the Act, pro *bono publico.*

After considering the above rules, the court held that the statute-31 was enacted by the parliament to protect the estates of ecclesiastical and religious institutions and declared all the earlier transactions as void, as those were against the object of the statute. Accordingly, the Court upheld the validity of the Act. The rules formulated by Lord Coke in this case are known as the rules in *Heydon's Case.*

This rule is also known as *'Purposive Construction'* which means that, the mechanical approach to construction is altogether out of step with the modern positive approach.

2. Application of mischief Rule in England (English case Law) : The Mischief Rule of Interpretation Coined by Lord.Coke in Re.Heydon's case (1584) has been applied in England in several cases. A few of them are detailed below-

Smith vs. Hughes, (1960) W.L.R at 830): In the instant case, parker LCJ applied the mischief rule, while interpreting the street Offences Act, 1959 (England). The appellant ,a prostitute was prosecuted under section 1(1) of the said Act for attracting the attention of passengers walking in the street by sending sign from the balconies and windows of the prostitute's house parker LCJ took in to consideration the mischief aimed at by this Act namely to clean up the streets to enable people to walk pleasantly without being molested or solicited by the prostitutes upheld the validity of section 1(1) of the Act and confirmed the conviction of the appellant by the lower court.

In *The Royal College of Nursing (RCN) vs. DHSS,* [(1981) A11. E.R. 545, P. 564], the RCN challenged the involvement of nurses in abortions. Under the offences against the the person (1861) it is an offense for anyone to carry out an abortion. However, the Abortion Act, 1967 claims an absolute defence for medically registered partitions to carry out abortions. Hormonal abortions are commonly administered by nurses. The Mischief Rule was used to interpret that the statue of 1861 was trying to combat backstreet abortions and therefore nurses fall within the 1967 Abortion Act.

Re Newspaper Proprietor Agreement (1962) L.R 3 R P 360) : In this case, the court applying the mischief rule of interpretation, held that, it is the duty of the registrar under section 1(2) of the (English)Restrictive Trade Practices Act, 1956 to maintain a register of Agreements including of those agreements, which were expired or terminated by the parties. The court in arriving at this decision took in to consideration the mischief of the act was intended to remedy the agreement to that effect.

3. Application of the Mischief Rule of Interpretation in India (Indian Case Law) : In India, the mischief rule (Heydon's Rule) has been is applied in several cases .A notable among them are detailed below-

R.M.D. Chamarbaugwalla vs. Union of India, AIR (1957) SC 628 : In this case ,the Supreme Court applied the mischief rule, while construing the definition of Prize Competition under section 2(d)of the prize competition Act, 1955. The question that arose before the court was, whether the said Act applies to competitions involving substantial skill and are not in the nature of gambling. It was held that the definition was inclusive of only those competitions, in which success does not depend upon any substantial degree of skills. Hence, those prize competitions, which require some skill were exempted from the definition of prize competition under section 2(d) of the prize competition Act,1955.

C.I.T., M.P., Bhopal vs. Sorda Devi, (AIR 1957 SC 832) : In this case, the Supreme Court through Bhagwathi J applied the mischief rule in Heydon's Case for construing the word 'individual' in the context of section 16(3) of the Indian Income Tax Act, 1922.

This sub-section read that 'In computing the total income of any individual for the purpose of assessment, there shall be included (a) so much of the income of a wife or minor child of such individual as arises indirectly or directly'. The question, therefore, was whether word 'individual' accruing in this sub-section meant only a male or also included a female. It was observed by Bhagwati, J:

In order to resolve this ambiguity, therefore, we must of necessity have resort to the state of the law before the

enactment of the law before the enactment of the provisions, the mischief for which the law did not provide, the remedy which the legislature resolved and appointed to cure the defect, and the true reason of the remedy.... It is clear that the evil which was sought to be remedied was the one resulting from the wide spread practice of husbands entering into nominal partnerships with their wives and father admitting their minor children to the benefits of the partnerships of which they were members. This evil was sought to be remedied by the enactment of section 16(3) in the Act. If this background of the enactment of section 16(3) is borne in mind there is no room for any doubt that however that mischief was sought to be remedied by amending the Act, the only intension of the legislature in doing so was to include the income of the male assessee, the husband or the father, as the case may be, for the purposes of the enactment.

In *S.C. Prashar vs. Vasantsen Dwarkadas*, [AIR 1963 SC 1357], the scope of the rule in Heydon's case has been explained by Das, J. Thus: "in construing an enactment and determining its true scope it is permissible to have regard to all such factors as can be legitimately be taken into account to ascertain the intension of the legislature such as history of the Act, the reasons which led to its being passed, the mischief which had to be cured as well as the cure as also the other provisions of the statute. That is the rule in Heydon's case [(1584) 76 ER 637] which was accepted in RMD *Chamarbaugh Walla vs. Union of India*, [(1957) SCR 930].

In *Amarendra Pratap Singh vs. Tej Bahadur Prajapaati*, [AIR 2005 SCW 4114], it has been observed that the Court would place such construction on the meaning of the words as would enable the legislative intent being effectuated. Where the object of the legislature is to prevent a mischief and to confer protection of the weaker sections of the society the Court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved.

In *Badshah vs. Sou. Urmila Badshah Godse*, (AIR 2014 SC 869) the Supreme Court held that while interpreting a statute the Court may not only take into consideration the purpose for which the statute was enacted but also the mischief

it seeks to suppress. It was held that while entertaining an application of destitute wife or hapless children or parents under section 125 of Code of Criminal Procedure, the court is dealing with marginalized sections of the society. The purpose is to achieve 'social justice'. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. The Supreme Court held that while dealing with cases under this provision, drift in the approach form 'adversarial' litigation to social context adjudication is the need of the hour.

4. Advantages/Merits of the mischief Rule : Application of the Mischief rule while construing a statute is advantageous in several respects. A notable among them are stated below-

1. It (the mischief rule of interpretation) closes/ vanishes loopholes in law (statute) and helps laws to develop.

2. It confers on judges discretionary power to judge as to when the rule is suited to specific, often ambiguous cases.

3. It allows the statutes to be refined and developed.

4. It upholds the rule /doctrine of separation of powers, parliamentary supremacy and sovereignty of the state.

5. It avoids unjust or absurd results in sentencing.

6. Application of this rule is the best way of interpreting the statutes as opposed to the Grammatical (Literal) or Golden (British) rule of interpretation.

5. Disadvantages/Demerits : Application of the mischief rule of interpretation suffers from the following demerits/limitations-

1. It is too old, it has been in use since 16th century (Heydon's Rule: 1584). In those days common law (judge made law) was the main source of law and parliamentary supremacy was not established at that time.

2. It confers complete discretionary power on judges, who are unelected, which is argued to be undemocratic.

3. The mischief rule interpretation, sometimes results in uncertainty of law.

4. Complete discretionary power on judges leads to adverse opinions of judges and infringement on the separation of powers.

LECTURE X

INTERPRETATION OF PENAL STATUTES

SYNOPSIS

This lecture covers the following heads--

1. Introduction
2. Penal Statute: Meaning
3. Penal Statute: Definition
4. Interpretation or Construction of Penal Statutes
5. The Rule of Strict construction of Penal Statute
6. Strict Construction of Penal Statutes : English cases
7. Strict Construction of Penal Statutes : Indian Cases
8. Interpretation or Construction of Penal and Remedial Statutes
9. Mens Rea in Statutory Offences and Strict Construction in Penal Statutes and
10. Vicarious Liability in Statutory Offences and Strict Construction of Penal Statutes

* * * * *

1. Introduction :--The primary function of a state is maintenance of law and order and the establishment of peace and security in the society. The state with the help of law, through the administration of criminal justice maintains the law and order and ensures social security. Therefore the legislature, in the interests of individuals in particular and the public in general passes penal statutes to regulate/ eradicate crime rate and to ensure social security.

2. Penal Statute : Meaning: The term 'penal' connotes some form of punishment imposed against an individual by mandate of the state. **Whereas the word** 'statute' denotes an

act of the legislature. In other words, a statute is the formal expression in writing of the will of the legislature in a state. A penal statute is a statute passed by the legislature, which prescribes/provides punishment to an individual, found guilty of commission of an offence. The punishment may be in from of a pecuniary penalty viz.... fine, forfeiture of properly or by infliction of restraint on personal liberty by way of imprisonmeny, simple or rigorous or taking a way of life by imposing death penalty/sentence. In simple words, penal statute prescribes various forms of punishments for different offences of the public nature.

A penal statute may be in form of a penal code. A penal code is a systematic collection of legal provisions prescribing punishments for various kinds of offences. Penal statutes deal with penal actions, which are also known as "offences". The word offence is used in the penal codes (viz. the Indian Penal Code, 1860, the code of crime or public wrong. It is an offence against the public at large or society as whole. According to section 40 of the Indian Penal Code, 1860 the word 'offence' denotes "a thing punishable by the Indian Penal Code, 1860".

According to section 2(n) of the code of criminal procedure, 1973 'offence' means "any act or omission made punishable by any law for the time being in force and includes any act in respect of which complaint may be made under section 20 of the cattle trespass Act, 1871. Further according to Article 20(1)of the Indian constitution "an offence is meant something ,which is a violation of a law in force and for the violation of which the law prescribes a penalty."

3. Penal statute: Definition :--A penal statute is defined to the one, which imposes a forfeiture or penalty for transgressing its provisions or for doing a thing prohibited.

Penal statute is that which provides punishment for certain acts or wrongs which are done in violation, disobedience of law and direct the state to make the particular act as liable to imprisonment, fine or forfeiture or other penalty.

Penal statutes provide for penalties for disobedience of the law by the offender by making him liable to imprisonment, fine, forfeiture or even death sentence. In India, the prominent and major penal statutes are, the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 etc., and the Special

Penal Statutes (Special Penal Legislations) are namely. The Dowry Prohibition Act 1961; The Protection of Women from Domestic Violence Act, 2005; Prevention of Corruption Act, 1988; The Essential Commodities Act, 1955, the Prevention of Food Adulteration Act, 1955 the Terrorists and Disruptive Activities (Prevention) Act, 1987 etc.

4. Interpretation or construction of penal statutes :--In a penal statute, it is the duty of the courts to interpret words of ambiguous meaning in abroad and liberal sense. If so, they will not become traps for honest unlearned (in the law) and unwary men. The principles of construction (interpretation) do not vary (change) from statute to another statute. In other words, there is no distinction/difference in application of the principles of construction (or interpretation) between a penal statute and a non-penal statute or between a taxing statute and a non taxing statute. What is required is, proper construction should be made, whether the statute be penal or fiscal. Then only, it leads to certain result, which has to be included within the statute.

Pollock C.B, while interpreting a penal statute in-

Attorney General vs Sillems, (1864) 2 H&C 431) enunciated that-"our institutions were never more safe than the present moment, but we cannot lose any of the grounds of our security; no calamity would be greater than to introduce a lax or elastic interpretation of a criminal statute to serve a special but temporary purpose."

5. The rule of strict construction of penal statutes :--The basic rule of strict construction of penal statute is that, "a person cannot be penalised without clear letter of law" (As it is said that a culprit can escape from criminal liability but an innocent should not be convicted/put to criminal liability). Therefore, presumption and assumptions cannot be taken in to consideration in penal statutes. The word is a penal statute must be construed strictly in accordance with the provisions of law.

In *Dyke vs. Elliot* (1872) L.R.4 PC 184): It was held through Lord Justice James that, no doubt all penal statutes are to be construed strictly, that is to say, the court must see that, the thing charged as an offence, is within the meaning of the word used in the penal statute .

Madho Saran Singh vs. Emperor, (AIR 1943 All 379):It was held in this case that as a rule, any penal statute/ enactment should be interpreted in an atmosphere free from all bias. In case there is any reasonable doubt, the party sought to be charged, should be given the benefit of doubt.

There is a firm rule of interpretation that a penal statute must be construed strictly. A penal statute must be construed according to its plain natural and grammatical meaning. Peanl Acts should never be construed so as to narrow down the words of the statute. In constructing a penal Act the procedure indicated by a penal Act must be closely followed.

In *London Country Council vs. Aylesbury* ((1898) 1 Q.B. 106) it was observed that 'in a criminal stature, we must be quite sure that the offence charged is within the letter of the law. The court ought not to do violence to its language to bring people within it, but ought to take care that no one is brought within it who is not within its express language.'

In *State of Jharkhand vs. Ambay Cements,* [(2005) 1 SCC 368] the Supreme Court held that it is settled rule of interpretation that where a Statute is penal in character, it must be strictly construed and followed.

Maxwell in his 'Interpretation of Statutes (12th Edition) observes that strict construction of penal statutes manifests in four ways:-

The First Way : Express languages:

The first requirement is that the offence in the statute must be manifestly defined with accurate terms and without any ambiguous meanings. An act or omission may be treated as an offence and it depends upon the definition given by the concerned penal statute. Generally the penal provisions contain the negative terms viz., you should not steal; if you steal, you will be punished. Sometimes the penal statutes may contain the positive terms viz., if the person fails to pay the maintenance, then he will be punished.

Second Way : Explanation of offence:

The Legislative must explain the elements of an offence. It must mention clearly the essential conditions in which the act of a person can be treated as an offence.

Third Way : Punishments:

Imposing punishments is the essential ingredient of the penal statutes. For the graver offences punishment should be severe such as imprisonment (rigorous or simple) and for the lighter offences penalty by way of cash. For certain offences, either imprisonment or penalty or both may be prescribed.

Fourth Way : Jurisdiction and Procedure:

The criminal act must be inquired and tried by the competent Court in prescribed procedure.

Penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptation would comprehend. The penal statutes are to be construed strictly by applying the plain meaning of the thing charged as an offence and by not straining the words on any notion that there has been a slip, that there has been a causes omissus, that the thing is so clearly within the mischief that it must have been intended to include. A penal law must not be extended to other cases than those intended by the legislature, even though we think they come within the mischief intended to be remedied. (Lord Kenyon in *Jenkinson vs Thomas,* (1792) 4 T.R. 665, 666)

In *Appasaheb vs. State of Maharashtra,* (AIR 2007 SC 763) the appellant was charged under the Dowry Prohibition Act, 1961. The prosecution alleged that the appellant demanded money due to some financial stringency or some urgent domestic expenses or for purchasing manure. The Apex Court held that such a demand cannot be termed to be a demand for dowry, and as per Dowry Prohibition Act, 1961, the giving and taking of the property or valuable security must have a rational nexus with the marriage of the parties. Since such an element was not present in the instant case, the conviction of the appellant under Sec-304.B was set aside.

6. Strict Construction of Penal Statutes: English cases:

ReHPC Production Ltd., (1962) All E.R.436 **:** In this case, Plowman, J applied the rule of strict construction to construe the provisions of the Exchange Control Act, 1947 (England). The Act prohibits the residents except the authorised dealer to borrow foreign currency. One, who violates the provisions

of the Act is punishable under the Act. A, a resident in the UK, B made payments of foreign currency in New York and Paris to person not accountable to A, the arrangement was not a translation of borrowing by A from B and was not hit by the provisions in question.

Restriction of Offensive Weapons Act, 1959 provides for punishment to any person who 'sells or offers for sale' a knife of a particular description. A shop-keeper had displayed a knife in his shop window with price tickets. Applying strict construction, it was held that 'offer for sale' did not include 'exposure for sure' and therefore no contravention by shop-keeper. *Fisher vs. Bell,* [1960 3 All.E.R. 731] .

7. Strict Construction of penal statutes: Indian cases

It was held that the expression 'any currency note or bank note' used under Section 489-A of the Penal Code includes currency notes of all countries and not only Indian currency notes. *State of Kerala vs. Mathai Verghese,* [AIR 1987 SC 33].

The Supreme Court held that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. As for the definition of 'dowry' in the Dowry Prohibition Act, 1961, the giving or taking of property or valuable security must have some connection with the marriage of the parties which is absent in the present case. In view of the above the conviction of the appellant under Section 304-B, Indian Penal Code for dowry death was set aside. *Appasaheb vs. State of Maharashtra,* [AIR 2007 SC 763].

The appellant was convicted under Section 16 of the Prevention of Food Adulteration Act. 1954 for selling adulterated butter. He contended that it was not better within the meaning of the rules made under the Act because butter means butter made from milk whereas he had sold butter made from curd. Further, the Act being a Penal statute the word butter had to be strictly construed in favour of the accused. *M.V. Joshi vs. M.U. Shimpi,* [AIR 1961 SC 1494]

The Supreme Court, while rejecting the contention held that strict construction means that the conduct of the accused for his conviction must fall within the plain words of the penal statute without straining their natural meaning If it does not so fall and there are two possible reasonable constructions, that construction which is lenient to the accused must be accepted. In the present case the word butter is clear and there cannot be two meanings of it. There, the question of interpreting it in favour of the subject does not arise.

8. Interpretation or Construction of Penal and Remedial statutes : (I) Vepa P. Sarathi in his 'interpretation of Statutes' provides the following rules relating to construction of penal and remedial statutes:

(1) Section 26 of the General Clauses Act, 1897 deals with the provision as to offences punishable under two or more enactments. It provides:

"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

1. An offence takes place in two ways namely a) commission of an act (Killing a person by giving /administering poison) or omission of an act (killing by not giving food) .Where an act or omission results in commission of an offence under two or more enactments (penal statutes viz the Indian Penal Code,1860 and the Dowry Prohibition Act, 1961, Eg. Dowry Death), the offender shall be prosecuted and punished under only one Act. Because, no person shall be prosecuted and punished twice for the same offence (Article 20(2) of the Indian Constitution, which deals with Double Jeopardy).

2. When, there are two penal statutes prescribing punishment for the same offence, The earlier (old) statute prescribes fine and the later (new) statute prescribes imprisonment, the two statutes are regarded as cumulative

3. Where the earlier statute prescribes lesser fine as punishment and the later statute prescribes higher rate of fine, the fine prescribed in earlier statute stands repealed.

4. Where certain procedure has been prescribed is earlier statute for trial of certain class of offences is also

prescribed for some other classes of offences in the later statute, the two statutes are regarded as cumulative statutes .For instance, the procedure prescribed for trail of a cognizable offence by earlier statute is prescribed by later statute for trial of non-cognizable offence (cognizable offence is a more serious offence in respect of which the police officer can arrest the accused without any warrant. Whereas non-cognizable offence is less serious one, in respect of which, the police officer cannot arrest without warrant from the magistrate concerned of that area).

5. Where a later statute makes provision for right of appeal and no provision to that effect was not there in the earlier statute, it is an implied repeal of the earlier statute.

6. Where a new/later statute makes an alteration of the importance or circumstance of an existing offence, it implies the repeal of the earlier statute. In other words, where there is a conflict or inconsistency between the earlier and later statutes, the later statute prevails over the earlier, which stands repealed.

In *Kedar Nath vs. Sate of West Bengal,* (AIR 1953 SC 404) the appellant was punished for committing an offence in 1947 and the penal provision includes both imprisonment and payment of fine. During the pendency of trial, the penal provision of the Act was amended and the fine was enhanced to an amount equivalent to the amount procured by the offender. The court punished the appellant under the amended provision with enhanced fine. The Supreme Court held that this enhanced punishment could not be meted out to the offender in view of clear provisions of Art-20(1) of the Constitution.

In *Ashok Kumar vs. State of Haryana,* (AIR 2010 SC 2839) a dowry-death case, allegations of harassment, beating and burning the deceased were levelled against the husband and in-laws of the victim. The Supreme Court held that the expression "in connection with any demand for dowry" in Sec-304-B of the Indian Penal Code cannot be given a restricted or narrower meaning, and even in common parlance and on its plain language, it has to be understood generally. The object of the legislation is to comprehend every word or act offending the interests of the affected party (wife) connectable to demand of dowry 'in connection with the marriage' within the sweep of

culpability, and resultantly the accused were convicted under Sec-304 of I.P.C.

9. Mens Rea in statutory Offences and strict construction in penal statutes:

***Mens Rea* or Evil intent or Guilty mind or mental element :** The most important element that constitutes crime is *mens rea.* It is also known as evil intent or guilty mind or mental element. It means "an intention to do a forbidden act". The court/judge takes *'mens rea'* into consideration, while fixing the criminal liability as to convict or acquit the accused. For instance, an accident of a vehicle without any negligence of the driver (inevitable accident) causes death of 10 persons, it is no crime and the driver is exempted from the criminal liability on the ground that he has no evil intent/ intention to cause their death. According to Section 80 of the Indian Penal Code, an accident without any criminal intention, but only due to misfortune, while doing a lawful act, is no offence on the ground that *mens rea* is absent. If *mens rea* is present, the wrong doer is liable/punishable. In other words, killing 10 persons without *mens rea* by accident is no crime and hence there is no criminal liability. Whereas, in killing one person intentionally with a knife or revolver, *mens rea* is present. It amounts to murder and is punishable. In simple words, if *mens rea* is present, there is a crime. If the *mens rea* is absent, there is no crime. Therefore, *mensrea* forms basis for fixation of the criminal liability. Samshul Huda, an eminent jurist opined that *"the very corner-stone of criminal jurisprudence is the mens rea"*

Crime is a social phenomenon. It varies from place to place and from time to time. Similarly, *mens rea* varies from offence to offence. *Mens rea* in an attempt to steal a hand bag is different from an intention to kidnap a child. Therefore, the term *mens rea* is not defined in the Penal Code. It varies from offence to offence and from the situation to situation. For instance, a thief enters into a house with an intention (*mens rea*) to steal or rob some property and has no intention to harm anybody. In case he is prevented/obstructed by someone to steal/rob, he may kill him/her. (Note: Taking away movable property *i.e.,* jewellery or cash without the knowledge of the owner is called stealing/theft. If it is done, by threatening with a knife or revolver, it is called robbery.)

Therefore, it is clear from the above that *mens rea* is an essential constituent to arrive at the guilt of an offence and to award the punishment to the guilty person (convict). However, there are certain exceptional cases in which *mens rea* need not be taken into consideration for deciding the guilt of the accused. E.g. kidnapping a minor girl with an intention to marry her (*R. vs. Prince,* (1875) 2 CCR 154) or sexual intercourse with a girl below the age of 16 years old with her consent amounts to rape and is punishable even then would certainly get married in due course.

Position in England or Application of the Doctrine of *Mens Rea* in England : In England, the doctrine of *mens rea* has been applied to all common law cases (common law means "judge made law" *i.e.,* law or principle law coined/evolved/made/created by judges during the course of judicial pronouncements. E.g. the principle of neighbourhood coined by Lord Atkin in *Donoghue vs. Stevenson* (1932 A.C. 562, the principle of stried liability coined by Lord Blockburn J. in *Ryland vs. Fletcher,* (1868 L.R. 3 H.L. 330 etc.) without any reservations. In statutory offences, also *means rea* is applied subject to certain exceptions. For instance, if the act itself is an offence prima facia, application of *mens rea* is immaterial. The relevant leading case on this point is—

R. vs. Prince (1875) 2 CCR 154 (HL) – Mr. Prince, the accused in the instant case, was in love with a girl Miss. Annic Philips, who was below the age of 16 years. The accused had taken away the unmarried girl from the lawful custody of her parents with an intention to marry her. He thought that she was above 16 years and the girl told him that she was 18 years old. The father of the girl lodged a complaint, alleging that Prince had illegally taken away his unmarried minor daughter below the age of 16 years. Prince was arrested and the criminal proceedings were instituted against him.

According to Sec. 55 of the Offences against Person Act, 1861 (in England), "taking away an unmarried girl below the age of 16 years from the lawful custody of her parent or guardian against the will be her parent/guardian is an offence and such person is guilty of misdemeanour." The accused, though he had no *mens rea,* was convicted on the ground that his act of taking away an unmarried girl below 16 years from

the lawful custody of her parent itself was an offence punishable irrespective of the proof of *mens rea.*

In *R. vs. Bishop,* (S.Q.B.D. 259) : The accused in this case was convicted for receiving lunatics in an unlicensed house, although he honestly and reasonably believed that they were not lunatics.

Mens rea was taken into consideration in the case of—

R. vs. Talson, (1899) 23 RBD 168 : It is a very important and leading case on *mens rea.* Martha Ann Talson (Mrs. Talson) get married with Mr. Talson on 11th September, 1880. Mr. Talson deserted her and left the matrimonial home on 13th December, 1881. Mr. Talson's whereabouts were unknown for more than 7 years+. She made all enquiries about her husband and learned from reliable sources that he died in a ship-wreck. Mrs. Talson got remarried in 1887 reasonably believing that her husband died. Sometime after her remarriage, her first husband reappeared and charged her for bigamy. On the ground that marrying again during the life time of the other spouse amounts to bigamy and is punishable under Sec. 57 of the Offences Against Person Act, 1861. Similarly, bigamy is an offence under Sec. 494 of the Indian Penal Code.

The trial Court convicted her for one day. On appeal, she was acquitted on the ground that she had no *mens rea.*

In *R. vs. Wheat & Stock,* (1921) 2 K.B. 119 : The accused in the instant case was an illiterate. He was informed in good faith that he had been granted divorce and he got remarried. His first wife charged him for bigamy. The Court held him guilty of bigamy and convicted him.

Talson's case and *Wheat's case* are quite distinct from each other. In the former, there was a mistake of fact, which is excusable and hence Mrs. Talson was acquitted, while in the latter case, there was a mistake of law, which is not excusable, and hence, the accused was convicted.

The above case law makes it clear that there had been confusion with regard to the application of the doctrine of *mens rea* in statutory offences. Therefore, the doctrine has been resurrected and is made applicable not only to common law offences, but also to statutory offences.

It is clear from the above case law that, there had been a great confusion with regard to the application of the doctrine of *mens rea* in statutory offences. Therefore, the doctrine has been resurrected and has been made applicable not only to the common law offences, but also to the statutory offences.

Position in India or the Application of the Doctrine of *Mens Rea* in Indian Cases : The term *"mens rea"* has not been defined or used in the Indian Penal Code. It cannot be defined accurately, because, its veracity varies from an offence to offence. However, it has been applied by the Indian Courts to arrive at the guilty of an offence. The doctrine of *mens rea* is applied in two different ways to avoid confusion.

1. The actual intent required for the offence was used in defining the offences.

2. The expression fraudulently, dishonestly, voluntarily and intentionally etc., are used in the definition to indicate the criminal intent.

The doctrine of *mens rea* has been applied by the Indian Courts. It is now settled that *mens rea* is an essential ingredient of an offence. But, it is not essential in respect of certain offences viz., Waging War (S. 121), Sedition (S. 124A), Kidnapping (S. 359), Abduction (S. 363), Counterfeiting of Coins (S. 232) etc. The farmers of the Indian Penal Code, while drafting the Code used the words viz. Voluntarily (S.39), Fraudulently and Dishonestly (Ss.24, 25) etc., which are equivalent to the word *'mens rea'*.

The word 'Voluntarily' has a more extended meaning that the word 'intentionally'. According to Sec. 39 of the code, "a person is said to cause an effect voluntarily, when he causes it by means, which at the time of employing those means, he knew or had reason to believe to be likely to cause it." In simple words, the word 'Voluntarily' means, "an act done without influence or compulsion."

The word 'Fraud' has not been defined in I.P.C., but, according to Sec.24 I.P.C. "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise." The word 'Dishonestly' according to Sec. 24 I.P.C., means "Whoever does anything with the intention to causing wrongful gain to one person or wrongful loss to another is said to do that thing dishonestly."

The maxim 'actus *non facit reum, nisi mens sit rea*' is rooted in the antiquity of English legal history. The requirement of a guilty state of mind at least for the more serious crimes has come to be developed even by the time of Coke. Coke traces the origin of the maxim '*actus non facit reum nisi mens rea*'. The author of '*leges Henrici*' picked it uo from some intermediate work in which 'linguam' may possibly have disappeared. In his institute Coke categorically states the law as follows: "If one shoots at any wild fowl upon a tree, and the arrow kileth any reasonable creature, after all, without any evil intent in him, this is per '*infortunium*'. After Coke, this maxim was taken in many English decisions. Lord Keyon C.J. in *Fowler vs. Pedget,* [(1798) 101 ER 1103], observed that "the intent and the act must both concur to constitute the crime". Lord Arbinger in *R. vs. Allday,* [(1837) 8 C&P 136] observed that "It is a maxim older than the Law of England that no man is guilty unless his mind is guilty".

AS STATED ABOVE, THE CONCEPT OF MENS REA IN THE OFFENCES DEFINED IN THE INDIAN PENAL CODE, 1860 APPEARS IN ANY ONE OF THE FOLLOWING FORMS-

(i) Intention or intentionally
(ii) voluntarily
(iii) Fraudulently
(iv) Dishonestly
(v) with knowledge
(vi) corruptly
(vii) malignantly
(viii) maliciously
(ix) wantonly
(x) Negligently
(xi) Rashly

(i) Intention or Intentionally : It means purpose or desire or inclination to bring about or produce certain consequences as foreseen. It is an act done knowingly to accomplish or satisfying a purpose. The intention to commit a

crime can also be done different ways namely, voluntarily, wilfully purpose. All these acts acts constitute intention.

(ii) voluntarily : The word 'voluntarily' has more extended meaning than the word 'intentionally'. According to section 39 of the Indian penal Code, 1860, "a person is said to cause an effect voluntarily, when he causes it by means, which at the time of employing those means, he knew or had reason to believe to be likely to cause it".

(iii) Fraudulently : According to Section 25 of the IPC "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

(iv) Dishonestly : Section 24 of the IPC provides that "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonesty'.

(v) with knowledge : The word 'knowledge' mean "awareness as to the consequence of an act to be done / committed". It is a state of mind entertained by a person with regard to existing facts, which he has himself observed".

(vi) corruptly : Corruptly denotes impropriety brought about by bribery, undue influence resulting in acts which are not consistent with the proper discharge of official duty or the rights of others. The words 'corrupt' and 'corruptly' usually imply that an act is done dishonestly without integrity for the sake of unlawful gain or advantage.

(vii) malignantly : An act done with a desire to just with a deep-rooted ill will or do harm to life violently.

(viii) Maliciously : The object behind the commission of an act may be good or 11 bad. If the object behind an act is bad, it is said to be malicious or the act is done maliciously miller, an eminent jurist says that "malice is a wrongful act done intentionally without just cause or excuse."

(ix) Wantonly : Wantonly means doing a thing recklessly or thoughtlessly without regard to its consequences. It implies a state of mind that is heedless, without excuse, regardless of the rights of other, reckless and preserve.

(x) Negligently : It does not denote evil intent but denote that want of care with which people of reasonable

prudence are expected to act and the want of which is culpable. In case of negligence the party does not perform an act to which he is obliged; he breaks a positive duty, he does not advert to the act which it is his duty to do. A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation would exercise.

(xi) Rashly : In rashness, the party does an act which he is bound to for bear; he acts hastely. Here he adverts to the act but not to the consequences of the act he does.

In Indian Penal Code the words 'rashly' and 'negligently' are used together. The question of liability for negligence or rashness cannot arise until it is established that the man who has been negligent owed some duty to the person who seeks to make him liable for his negligence. For the purpose of criminal law, a very high degree of negligence is required before the felony is established.

CASE LAWS

Srinivasamall was a salt distributor. His servant (clerk) infringed a rule without his (master's) knowledge. He was acquitted on the ground that he had no guilty intention (*i.e., mens rea*) since the act was committed without his knowledge. *Srinivasamall vs. Emperor,* AIR 1947 PC 135.

In this case, a servant of a petrol dealer supplied motor spirit without coupons and also received advance coupons without supplying motor spirit. The Supreme Court convicted the master even though he had no knowledge as to the act (*i.e.,* in the absence of *mens rea*). He was convicted for non-endorsement of coupons which was mandatory/compulsory. *Ravula Hari Prasad Rao vs. The State,* AIR 1951 SC 204.

The Supreme Court of India in—*State of Gujarat vs. D.P. Pandey* (AIR 1971 SC 866, p. 868) opined that – "the plain words of the general rule of law that "no crime can be committed unless there is mens rea, has not been ousted by the particular enactment."

In view of the above, it is clear that the doctrine of *mens rea* has been successfully adopted in Indian case except in certain special cases stated above.

10. Vicarious Liability in Statutory Offences and strict Construction of penal Statutes : The general rule is that, a person is liable for the crime committed by him only and not for the crime/offence committed by another. The

expression "vicarious liability" means "liability incurred for another". In civil law, by virtue of certain special relationship between master and servant, principal and agent etc. vicarious liability in civil litigation is obvious. However, it (vicarious liability) cannot be extended to criminal liability. For instance, driver of a vehicle commits an accident by negligence, causing the death of a pedestrian. In this case, the driver, being a wrong doer/offender, is criminally liable. But the master, *i.e.*, the owner of the vehicle will not have criminal liability. The court may direct the owner of the vehicle to pay compensation to the legal heir of the deceased. In other words, the master does not have criminal liability but only civil liability. Therefore, it is said that "**vicarious liability is unknown to criminal law.**" However, there are certain exceptions to this rule *i.e.*, the master is vicariously liable in respect of crime committed by his servant, if the master has been consented to it.

CASE LAWS

In *R vs. Huggins,* (1730 3 ID, Raym, 1574 92 E.R. 518) : The accused B and H were charged for murdering a prisoner. In fact, B the Dy. Warden killed the prisoner, H had seen the offence and came away. H was held not guilty on the ground that vicarious liability is not extended to criminal law.

Exceptions : In English Common Law, non-applicability of vicarious liability in respect of crimes is subject to the following exceptions. In other words, vicarious liability is applicable to criminal law in the following cases.

1. A master is vicariously liable and punishable for publication of a libel (defamatory matter in permanent form) by his servant. The master to plead the defence, has to establish that, it was published without his authority or it was published negligently (by his servant). Defamation is an offence under Sec. 499 is punishable under Sec. 500 I.P.C.

2. A master is vicariously liable and is punishable for a public nuisance committed by his servant. (Public nuisance is an offence under Sec. 268 I.P.C., Secs. 269 to 290 provide punishment for the public nuisance). However, it is very difficult to check effectively the acts of public nuisance.

Indian Law :

In India, vicarious liability is imposed on owners or occupiers of land, when unlawful assembly or riot takes place in their land. Sections 154, 155 and 156 of the Indian Penal Code deal with vicarious liability. Section 154 imposes vicarious liability on the owner or occupier of land on which an unlawful assembly is held. Section 155 imposes vicarious liability on owner or occupier of land for whose benefit riot is committed. Section 156 deals with liability of agent of owner or occupier for whose benefit riot is committed.

Sections 154, 155 and 156 of the Indian Penal Code read as follows:

Section 154 : Owner or occupier of land on which an unlawful assembly is held—Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station, and do not in the case of his or their having reason to believe that it was about to be committed use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly. Section 154 punishes owners or occupiers of, or any person claiming an interest in, land upon which an unlawful assembly is held or a riot is committed.

Section 155 : Liability of person for whose benefit riot is committed – Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to

prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Section 156 : Liability of agent of owner or occupier for whose benefit riot is committed – Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom. The agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

CASE LAWS

In *R vs. Prayag Singh*, (I.L.R. 1890 12 All. 550) : A riot took place on the land of Prayag Singh. During the course of riot, one Pir Khan was killed. Prayag Singh was punished under Section 154 IPC and was fined with ¹ 1,000/-.

Kazi Zeamunddin Ahmed vs. R., (I.L.R. 1901 28 Cal. 504) : In this case, the owner of an estate, where riot took place was convicted under Sec. 154 IPC for his agent's fault.

In addition to the above provisions under the Indian Penal Code, there are other statutes such as Prevention of Adulteration of Foods Act, Prevention of Prostitution Act, The Shops and Establishments Act, Weights and Measures Act, etc., in which vicarious liability is imposed upon the masters even without ***mens rea***.

Relevant Case on this point is:

Ravula Hariprasada Rao vs. The State, AIR 1951 SC 204 : In this case, a servant of a petrol dealer supplied motor spirit without coupons and also received advance coupons without supplying motor spirit. The Supreme Court convicted the master even though he had no knowledge as to the act (absence of *mens rea*). He was held vicariously liable and convicted for non-endorsement of coupons, which was mandatory.

Even a Company or Corporation may be held criminally liable for the acts and default committed by its Directors, Agents, Officers etc.

In *Moore vs. I. Bresler Ltd.*, (1944 2 All. Eng. Rep. 515) – a Company was convicted of making false tax returns made by its managers with intent to deceive/defraud not only the tax authorities but also the Company.

In *Munivel vs. State of T.N.* [AIR 2006 SC 1761], the Supreme Court held: "Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in persecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in persecution of that object, every person who at the time of committing that offence was member would be party to the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. It is also well settled that if death had been caused in persecution of the common object of an unlawful assembly, it would not be necessary to record a definite or specific finding as to which particular accused of the members of the unlawful assembly caused the fatal injury,"

Vicarious liability is imposed on owners or occupiers of land when unlawful assembly or riot takes place in their land, sections 154,155 and 156 of the Indian Penal Code deal with vicarious liability. Section 154 imposes vicarious liability on the owner or occupier of land on which an unlawful assembly is held. Section 155 improves vicarious liability on owner or occupier of land for whose benefit riot is committed. Section 156 deals with liability of agent of owner or occupier for whose benefit riot is committed [for details see Chapter 6 of Unit II relating Sections 154,155 and 156].

In *R. vs. Prayag Singh* [ILR 1890 12 All 550], a riot took place on the land of Prayag Singh. During the course of riot, one Pirkhan was killed. Prayag Singh was punished under Sec. 154, IPC and was fined with Rs. 1000/-

In *Kazi Zeamunddin Ahmed vs. R* [ILR 1901 28 Cal 504], the owner of an estate, where riot took place was convicted under Sec. 154, IPC for his agent's fault.

Statutory Liability

In addition to the above provisions under the Indian Penal Code, there are other statutes such as Prevention of

Adulteration of Foods Act, Prevention of Prostitution Act, the Shops and Establishments Act, Weights and Measures Act, Arms & Explosives Act etc.., in which various liabilities are imposed upon the masters even without *mens rea.*

In *Ravula Hari Prasada Rao vs. The State* [AIR 1915 SC 204], a servant of a petrol dealer supplied motor spirint without coupons and also received advance coupons without supplying motor spirit. The Supreme Court convicted the master even though he had no knowledge as to the act (absence of *mens rea).* He was held vicariously liable and convicted for non-endorsement coupons. Which was mandatory.

The Environment (Protection) Act, 1986, the Water (Prevention & Control of Pollution) Act, 1974, the AIR (Prevention & Control of Pollution) Act, 1981, etc., impose the strict liability upon the occupiers/principals not to pollute the atmosphere. If an occupier instructs his employees to discharge untreated effluents into the surrounding canal, land and atmosphere, the pollute/occupier is held liable.

As per the Factories Act, 1948 the owner of the factory is held liable for accidents due to negligence of duty of any person authorised to perform his duty.

LECTURE XI

INTERPRETATION OF STATUTES OF TAXATION

(INTERPRETATION / CONSTRUCTION OF TAXING STATUTES)

SYNOPSIS

This lecture covers the following heads-

1. Introduction
2. Tax, Taxation and Taxing statute : Meaning and Definition
3. Objectives of Taxing statutes
4. Principles of Construction of Taxing statutes
5. Features of Taxing Statues
6. Cannons of Interpretation of Taxing Statutes
7. Strict Construction and Application of strict Construction in Taxing Statutes and
8. Tax Avoidance and Tax Evasion.

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1. Introduction : The courts, while interpreting a statute should see that the intention of the legislature must be strictly adhered to. The Construction/interpretation must supress the mischief and to prevent evasion and abuse of powers so as to achieve the object of the statute/Act. The main objective of the tax laws is to get revenue to the state/ Government from its subjects to run the Government. If the imposition of taxes by the Government is abnormal/ unreasonable, people (tax payers) find out various ways/means for avoidance of taxes or evasion of taxes. Tax evasion means "avoiding the payment of tax without violation of tax laws. Tax is a compulsory exaction/collection of money by the Sovereign/ Government for public purpose (i.e. for implementation of welfare programmes viz construction of roads, irrigation projects, free housing subsidised goods and services). It is to

be noted (born in mind) that "taxes can be imposed /levied only under the authority of law. The Bill proposing tax law/ taxing is to be passed by the legislature and it is to be interpreted by the courts. Taxing statutes are also known as "Fiscal statutes". Taxing Statutes impose/levy taxes on individuals' income, sales profession and other commercial transactions. Therefore, much care and expertise is necessary for drafting a bill on taxing statute. Therefore, a taxing statute is to be construed strictly. In the words of Lord cairns-

General Principle of Strict Construction

If the person sought to be taxed comes within the letter of the law, he must be taxed ,however great the hardship may appear to the judicial mind to be .On the other hand ,if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be .In other words, if there be admissible in any statute, what is called an equitable construction, certainly ,such a construction is not admissible in a taxing statute where you can simply to the words of the statute (*Partington v A.G.*, (1869) LR 4 HL 100, p 122).

2. Tax, Taxation and Taxing statute: Meaning and Definition : State (Government) in order to raise revenue, imposes/levies taxes and fees. No tax shall be levied or collected except by authority of law. Taxes are levied on individuals' income, wealth (properties), sales profession and other transaction, commercial and domestic. The Purpose of taxing is to raise revenue for the state and to implement public welfare programmes. Tax revenue is distributed between the Union and states as per the Lists I and II respectively of the seventh schedule of the Indian Constitution.

Tax: Meaning : The word 'Tax' literally means "imposition of compulsory contribution or compulsory collection of certain part/percentage by the state (or its subordinate/local authority) from individuals and group of individuals income from out his salary, professional income, wealth and other financial transactions, commercial or otherwise to raise the revenue of the Government for public purpose") In other words, for smooth and successful functioning of the Government ,the state requires funds to meet several expenses and to implement various public welfare programmes viz construction of roads

,irrigation projects, supply of subsidized goods and services to the public etc. To meet all these financial commitments ,the state (or subordinate body /local authority like municipal corporation/Municipal council etc.) by passing the appropriate legislations (taxing statute/tax law) collects income tax, sales/ commercial tax, wealth tax, gift tax etc. So, the collection of compulsory contribution by state (or payment of compulsory contribution by individuals or group of individuals viz partnership Firms, companies etc.) is called 'Tax'.

Tax : Definition : There are several definitions on tax A few of them are given below-

Dalton : "A tax is compulsory contribution imposed by a public authority, irrespective of the exact amount of service rendered to the tax-payer in return and not imposed as a penalty for any legal offence".

Seligman : "Tax is a compulsory contribution from a person to the Government to defray the expenses incurred in the common interest of all, without reference to special benefits to the conferred".

Bartable : "A tax is compulsory contribution of the wealth of a person or a body of persons for the service of public power.

Australian High Court as reported in *Commissioner HR & CR vs. Lakshmendra,* (1954): "A tax is a compulsory exaction of money for public's authority for public purposes enforceable by law and is not payment for services renderd".

The term 'Taxation' may be defined as follows –

Meaning of 'Taxation':

Article 366(28) of the Constitution of Indian says, "Taxation includes the imposition of any tax or impost, whether general or local or special and 'tax' shall be constructed accordingly".

Taxation is the act of laying a tax, or imposing these burdens or charges upon persons or property, or in other words, the process or means by which the taxing power is exercised. The power of taxation is a power which the legislature takes, to impose taxes upon the property of the citizen for the support of the Government.

Taxing statute : Meaning : The state (Government / Local body) is empowered to levy various taxes to procure funds for public purpose and to run the Government. However, the State/Government cannot collect taxes directly by an executive action *i.e.* by passing and circulating a G.O (Government Rule/ Order). For the purpose of taxation, an appropriate legislation must be passed by the legislature .Therefore, no tax can be levied or collected except by the authority of the law i.e a taxing statute/tax law.

Taxing statute : Definition : Taxing statute may be defined as follows- Taxing Statute is one, which provides for the procedure of collection, the calculation of percentage of tax to be levied and matter connected therewith. Taxing Statutes are those which impose taxes on income or other kind of transaction .The Income Tax Act, Wealth Tax Act are some examples of fiscal or taxing statutes. Article 265 of the Constitution of India provides " No shall be levied or collected expect by the authority of law." Any compulsory exaction of money by Government amounts to imposition of tax which is not permissible except by or under the authority of a statutory provision. In a broad sense, there are three components of taxing statute viz., subject of the tax, person liable to pay the tax and the rate at which the tax is levied. There are three stages in the imposition of tax viz., (i) declaration of liability in respect of person or property; (ii) assessment of ta that quantifies the sum which the person liable has to pay; and (iii) method of recovery if the person taxed does not voluntarily pay.

3. Objective of Taxing Statutes : The main objective of Taxing statute (Taxation) is to collect/procure revenue to run the government and to utilise a part of the revenue for public purpose *i.e.* implementation of public welfare programmes viz construction of roads, irrigation projects etc. India being a welfare state and in view of preambular slogan of our constitution to ensure all justice, Liberty, Equality and Fraternity, the state (Government) is shouldered with the responsibility to ensure all justice, social, economic and political, takes all necessary steps for establishment of an egalitarian society. A step forward towards this direction is passing of the taxing statutes with socio economic objectives as stated below-

(i) Prevention of concentration of wealth or concentration of Economic power

(ii) Economic Stability

(iii) Adjustment in Allocation of Resources

(iv) promotion of Economic Growth

(v) social control

(i) Prevention of concentration of wealth or concentration of Economic power : Concentration of wealth or Concentration of economic power means "Centralisation of wealth in the hands of few individuals resulting in adverse effects in the economy of the country (national economy). Consequently rich become richer and poor become poorer.

Article 39(c) of the Constitution of India says that "the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment".

(ii) Economic Stability : The second objective of taxing statutes is to secure economic stability and promote economy of the nation.

iii) Adjustment in Allocation of Resources : India being a welfare state has to provide so many welfare programmes namely subsidised goods and services, free housing, electricity etc. To fulfil this obligation, the Government resorts to taxing statutes to procure funds for the purpose.

(iv) Promotion of Economic Growth : The status of a country/nation, whether it is an advanced state/country or developing country is determined in accordance with the volume of its national income and its population. Percapita income, which is a parameter to decide status of a country as advanced or developing or backward is arrived at by dividing the population by national Income. Sound and effective tax laws accelerate economic growth and thereby promote the national income /economy.

(v) Social Control : Social control is *sine quo non* (very essential) for healthy social change .There are several factors (technological, demographic etc.) which are instrumental for social control Taxing statutes also are recognised as the

instruments of social control Article 39(c) of the Constitution of India says that "the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. H.M Seervai has commented on taxing statues by highlighting the well-accepted principle that tax is a recognised instrument of social control and that tax is a recognised instrument of social control and that any assumption that a tax can not be used for purpose other than revenue is ill-founded.

4. Principle of Construction of Taxing statutes : The principle that applied for interpretation/construction of taxing Statutes and other statutes are the same .In other words, the principle of construction of taxing statutes do not differ from the principles of construction of other statues.

Lord Russell of Killowen does not find any reason why a taxing statute should be constructed differently from any other Act. The duty of Court, according to him, is to give effect to the intention of the legislature, and the intention is to be gathered from the language employed having regard to the context in connection with which it is employed.

In *Commissioner of Income-Tax vs. Shahazada Nand and Sons,* [1966 SC 1342], the Supreme Court has started that "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein which may be entertained by the Court as to what is just or expedient,"

5. Features of Taxing statutes : Following are the features of a taxing statute

(i) A taxing statute should be construed very strictly. The language used in the statute should be clear and in unequivocal terms to find out the intention of the legislature to impose/levy tax. The words are provision used in the statute must be clear and should contain natural meaning.

(ii) A person can be taxed, if the letter of law explicitly levies tax on him.

(iii) No presumption prevails against the taxing statutes and

(iv) Equitable construction is not admissible in taxing statutes.

The court, while interpreting a taxing statute must interpret it as it stands (as it is) The court should not elaborate or restrict the words in the statute. In case, there is a possibility of two reasonable principles of construction, the court must adopt the best of the two, quite suitable to the subject must be selected.

6. Cannons of Interpretation of taxing statutes: There are three cannons of interpretation of statutes, which the court should bear in mind. They are:

(i) First, taxing statues are to be constructed strictly;

(ii) Secondly, the subject not be made liable for payment of enhanced Court free unless such a step is warranted by the clear provisions of the statute; and

(iii) Thirdly, where there is doubt in the matter, as interpretation favourable to the subject should be preferred.

It is to be noted (born in mind) that, in construing a fiscal statute (taxing statute) and to determine a subject (person) to be taxed, one must act in strict adherence to the letter of law, but not to the spirit of law or the substance of the law. The taxing statute must provide clearly the power to impose/levy tax and fee payable to the delegated authority (Transfer of power or authority by superior authority to the lower/subordinate authority is called 'delegated authority'. For Instance, Parliament is the highest law making authority *i.e.* the supreme legislature. However, the parliament can delegate its law making authority to its subordinate bodies *i.e.* state legislatures to make legislation) The delegated authority (*i.e.* the subordinate authority) must act strictly within the parameters of the superior authority .So, there is no scope of implied authority for imposition of such tax or fee.

In *Commissioner of Income Tax ,Gujarat vs. A. Raman and Company,* (AIR 1968 SC 49), the Supreme Court observed tat payment of tax could be lawfully avoided by properly arranging and distributing the commercial affairs. The tax-

payer has a right to divert his income without flouting the provision of the Income Tax Act. But tax evasion is not permissible. In *State of Maharashtra vs Swanstone Multiplex Cinema (P) Ltd.*, (AIR 2009 SC 2750) it was held that where a State has power to impose tax and power to grant exemption or concession in respect of payment of tax, it has no power to collect the tax and retain the same. Despite ambiguity in the language of the statute, it must not be interpreted to confer an unjust benefit to any of the parties *i.e.* either the tax-payer or tax collector.

7. Strict Construction and Application of strict Construction in Taxing Statutes : All the general basic rules of construction are to be applied keeping in mind, the nature of statute to be construed/interpreted .Taxing statutes or Fiscal statutes fall within the purview of statutes imposing pecuniary burdens, they should be construed strictly. In other words, the principle of strict construction must be adopted in interpretation/construction of taxing statutes. In simple words, taxing statutes should be construed strictly, strict in the sense, an individual or group of individuals (one person or group of persons viz firms, companies etc.) should not be taxed unless the word of the statute unambiguously impose/levy tax on him/ them. Before a person to be taxed, the Act of the parliament must be read as per the natural construction of its words.

Lord Cairns, an eminent jurist enunciated that, "any person, who is sought to be taxed must come within the letter of law". Otherwise, he should not be taxed.

A person is free to arrange his source of income to pay least/lowest possible amount of tax. There is nothing wrong in lines drawn by the legislature for imposition of taxes and making it one's business to work outside them.

There is a taxing/charging section /provision in every taxing statute. A person to be taxed must be within the ambit of the charging section by its clear words in the statute. So, the demand for payment of tax must be in conformity with the provisions of the taxing statute . In other words, the subject is not to be taxed, unless the word of the taxing statute unambiguously imposed the tax on him. Because, in a fiscal (taxing) statute the provision must be strictly interpreted giving every benefit of doubt to the subject so as to enable him to rescue the burden of court fees.

In *State of Maharashtra vs. Mishri Tarachand,* [AIR 1964 SC 457] it has been held that "the Bombay Court-Fees Act is a taxing statute and its provisions therefore have to be construed strictly in favour of the subject-litigant."

In *Diwan Brothers vs. Central Bank of India, Bombay,* [AIR 1976 SC 1503], it has been held that the Courts have to interpret the provisions of a fiscal statute strictly so as to give benefit of doubt to the litigant.

Thus, a taxing statute must receive a strict construction by courts ,if there is any ambiguity in the provision of the statute. The benefit of the ambiguity must go to the subject / assesse.

New Piece Goods Bazar Company vs. C.I.T. Bombay (AIR 1950 SC165) The appellant in the instant case paid municipal tax and immovable property tax and claimed deductions for the same under section 9(1)(iv) and 9(1)(v) of the Income Tax Act, 1922. The Supreme Court, applying the principle of strict construction allowed the deductions under 9(1)(iv) of the Income Tax Act 1922.

In *Philip John Plasket Thomas vs. C.I.T.,* [AIR 1964 SC 587], Section 16(3)(a)(iii) of the Income Tax Act, 1922 was strictly construed by the Supreme Court. This section permits inclusion of such income of wife into total income of husband which income arises to wife from asserts transferred by husband otherwise than for adequate consideration. It was held that for application of this provision, husband-wife relationship must exist at the time when income accrued to wife and also at the time when transfer of assets is made. Income accruing to wife from assets transferred to her prior to marriage cannot be taken into account for computing total income of husband.

In *Azamijha vs. Expenditure Tax Officier, Hyderabad,* [AIR 1972 SC 2319] Section 2(g) of the Expenditure Tax Act, 1957 was construed by the Supreme Court. This section provides definition of 'dependant'. The relevant portion of the language reads "Dependent" means where assesse is an individual, his or her spouse or minor child and includes any person wholly or mainly dependent on the assesse for support and maintenance." It was held that words "wholly and mainly dependent on assesse" did not refer to spouse or minor child

and that spouse and minor child would be dependants even if they had their separate income and were not in fact wholly or mainly dependent on the assesse.

Martland Douly and Farm vs. Union of Indian, (AIR 1975 SC 1492) : In this case, the supreme court applying the principle of strict liberal construction rejected exemption from sales tax in respect of milk products for the reason, they were sold in sealed containers. The milk products viz chenna, Dahi, butter etc. got exempted from sales tax, if they were sold in loose quantities in unsealed containers.

Rajasthan Roller Flour Mill Association vs. State of Rajasthan, (1994) Supp.(1) SCC 413) The question arose in the instant case was, whether Maida, suji and flour ,which derived from wheat would come within the meaning of what? Section 14 of the central sales Act, 1956 declared certain goods viz paddy, rice, Maida etc. as the goods of special importance. The supreme court applying the principle of strict construction, held the wheat products viz, maida, suji, flour etc. Would not come within the meaning of wheat under declared goods.

8. Tax Avoidance and Tax Evasion. The state/ Government imposes/levies tax on the income of individuals from various sources viz. salary, professions like medical, legal, Engineering, business etc... One, who has been levied tax is called tax payer or subject or an assesse. An assesse tries to avoid or escape from the payment of tax either by legal means or by an illegal means In case of former, it is called "Tax Avoidance", while in the case of latter it is called "Tax Evasion".

Tax Avoidance : Taxing statutes make provisions in the statute to reduce or minimise tax liability so as to enable the assesse to plan under the letter of law to minimise his tax liability. The expression 'tax avoidance' means, a process by which a person (subject/assesse) with the letter of law (as per law or in accordance with the provisions of the taxing statute) reduces his/her tax liability. It is a process, by which an assesse can escape from tax lability without breaking law. In simple words, tax avoidance is the exploitation of rules with a view to reduce tax liability.

The expression, 'Tax Avoidance' is a process, by which necessary arrangements made (precautions taken) by a person (subject/assesse) with the letter of law (in accordance with

the provisions of the taxing statute), reduces his/her true tax liability. In simple words, tax avoidance is an art of dodging tax without breaking the law.

In the case of *C.I.T. vs. Bai Kakinaboo,* it is held that if any of the subjects are clever enough to avoid taxation by legal means, they are at liberty to do so. There is nothing wrong in so conducting in one's affairs within the laws as not to attract taxation.

Tax Evasion :--It is an illegal means to avoid tax liability .The term 'Evasion' means to avoid tax liability. The term 'Evasion' means "an attempt to avoid payment of tax in violation of law (*i.e.* non-compliance of taxing statute). It means ,deliberately escaping from paying tax, which ought to be paid.

Evasion is an act of escaping by means of artifice, a trick or subterfuge or to escape from liability. 'Evasion of tax 'means "illegally non-payment of tax, which is due and deliberate suppression or falsification of the truth or facts relating to one's true tax liability. Tax evasion is practised in various ways namely, benami transactions under-invoicing of export, over-invoicing of imports, suppression of sales, bogus purchases, fictitious losses etc.

Effects or Consequences of Tax Avoidance and Tax Evasion : Tax Avoidance and Tax Evasion leads to several consequences. A few of them are stated below-

(i) It results in decline in revenue and affects the economy of the country.

(ii) It causes/gives room for piling up of mountains of black money and leads to inflation.

(iii) It paves way for so many social evils viz. black marketing, monopoly, restrictive trade practices etc.

(iv) It causes political instability results in internal disturbance and failure of constitutional machinery.

LECTURE XII

BENEFICIAL CONSTRUCTION

(Liberal Construction)

SYNOPSIS

This Lecture covers the following heads-

1. Beneficial statute
2. Beneficient construction or
   Beneficial construction and
3. Decided cases

* * * * *

1. Beneficial statute : A beneficial statute is a progressive legislation, which provides for the welfare of certain classes of persons and also protects them from oppressive acts and atrocities from those, with whom they stand in some relationship. A beneficial statute is also known as "welfare legislation or socio- economic statute or a remedial statute". A beneficial statute is a statute, which confers on individuals or a particular class of persons some benefit thereby relieving them from certain obligations under contracts entered in to by them or protect them against oppressive acts from individuals, with whom they stand in certain relationship. (Master and servant., Employer and workmen etc. Are the best examples for special relationship). A beneficial statute may be in from of a Remedial statute or a welfare statute/legislation or a Socio-economic statute .A remedial statute is one ,which remedies defect in pre-existing law so as to meet/suit to the changing conditions in the society. A welfare statute aims to look after the well-being /welfare of the people .Likewise ,a socio-economic statute is one, which aims to secure the social and economic welfare of the deprived classes *i.e.* socially and economically backward classes .The Government of India passed several progressive legislations for the welfare of certain working classes.

The Union of India passed several beneficial legislations. Notable among them are stated below-

1. The Industrial Disputes Act, 1947

2. The Employees' State Insurance Act, 1948, the Factories Act, 1948 the Employees' Provident Fund and other Miscellaneous Provisions Act, 1952, the Employees' Pension Scheme, 1995, the Payment of Gratuity Act, 1972, the Payment of Bonus Act, 1972, the Employees' Family Pension Scheme, 1971, the Right of Children to Free and Compulsory Education Act, 2009, the Competition Act, 2002, the Equal Remuneration Act, 1976, National Rural Employment Guarantee Act 2005, the National Food Security Act, 2009, Employees Compensation Act, 1923.

3. A beneficial piece of legislation has to be construed in its correct perspective so as to fructify, the legislative intent underlying its enactment.

4. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intent should be preferred to the one which would frustrate it. This rule of liberal construction can only be resorted to without doing any violence to the language of the statute.

5. A beneficent provision must be meaningfully construed so as to advance the object of the Act, without causing any lacuna or defect appearing in the same.

6. Construction should subserve purpose of the enactment and should not defeat it. Construction should be such that no part of the enactment is rendered otiose or surplus.

7. When beneficial legislation is construed, wider interpretation must be given for the advantage of the section of people, the target group of the enactment.

8. The Courts have a duty to construed the provisions of a statute to advance the cause of justice and facilitate the day-to-day working of the statute to serve the public interest and achieve the object of social betterment.

9. While construing the beneficial legislation, the Courts must look them as they constitutionally valid or not.

10. Courts should adopt a construction which advances the policy of the legislation to extend the benefit rather than one which curtail the benefit.

11. Literal construction is not the invariable rule. Court should construe meaningfully in appropriate cases. If literal meaning produces anomalous, absurd and unjust result which may be violative of Constitution, Court should avoid it and adopt a construction which should advance the object and purpose of the provision or the statute.

12. The Court should make a purposeful interpretation so as to 'effectuate' the intention of the legislature and not a purposeless one in order to 'defeat' the intention of the legislators wholly or in part.

2. Beneficient Construction or Beneficial Construction : The provisions of beneficial statute or social welfare legislation should not be interpreted like a simple statute .The court must adopt social beneficent rule of construction in respect of the interpretation of beneficial statutes .The rule of beneficent/beneficial construction of statutes is based on the ideal of welfare state. It is enshrined in the legal maxim "*solus populi est supremalex*, which means, **"the welfare of the people is the supreme for the law".** This can be achieved only when justice is administered lawfully, judicially without any fear or favour. Beneficial construction is a method of understanding the words of a statute with broad perspective and public good, avoiding parochial sentiments and propositions. In a beneficial statute, beneficial provisions are incorporated for public/social interest and also see that they are constitutionally valid.

Beneficent construction means "an interpretation to promote public good and prevent misuse of power. Beneficial statutes should not be construed too restrictively. In case of doubt or two possible views, the beneficial legislation is to be interpreted in favour of the beneficiaries.

As the name itself indicates, welfare or beneficial statutes are designed to provide various beneficial provisions for the welfare and upliftment of the weaker sections. The courts, while interpreting the beneficial statutes, should use the words used by the legislature in their true sense *i.e.* in strict adherence to the intention of the legislature. The question of beneficial construction does not arise, if the words of the statute are quite clear and unequivocal. Where the words of the statute are equivocal, beneficial construction is applied/ adopted with a view to fructify the objective of the statute. The

beneficial construction must be in consonance (in accordance) with the principles of justice, equity and good conscience. The Courts must be liberal and generous towards the persons or class of persons/weaker sections to whom the benefits under the statutes are conferred/provided for. The courts, while construing the beneficial statute should take all efforts for the cause of justice and felicitate the day to day working of the statute to achieve the objective of the beneficial statute. In other words, the courts should adopt such construction, which advances the policy of the legislature to extend the benefits under the statute, but not to curtail. Therefore, beneficial legislations are called social welfare legislations and hence, warrants always the beneficial construction to fulfil the objectives of the statute.

Beneficial constructions is a tendency rather than a rule. Where language of the words fails to fulfil the object of the statute, more extended meaning could be given to achieve the object of the statute. According to beneficent construction, if a welfare legislation i.e an act does not confer any right on workmen, the Act must be constructed in favour of the workman, provided the Act does not indicate any negative intention towards the interest of the workmen.

3. Decided Cases : The supreme Court applied the rule of beneficent/beneficial construction, while interpreting many beneficial statutes/social welfare legislations. A few of them are detailed below-

Regional Director, Employees' State Insurance Corp., Trichur vs. Ramanuja Match Industries, [(1985) SCC (1) 218].

In this case the Supreme Court held that, beneficial legislation should have liberal construction with a view to implement the legislative intent, but, where such beneficial legislation has a scheme of its own there is no warrent for the court to travel beyond the scheme and extend the scope of the statute on the pretext of ending the statutory benefit to those who are not covered by the scheme.

Amertham Kudumbh vs. Sarnem Kundumban, [(1991) 3 SCC 20].

In this case the Supreme Court held that, while interpreting any beneficial and social legislation, its interpretation should not be too rigid and the intension of the

legislature and the policy underlying the legislation must also be kept in mind. Unless the language of the statute goes against the intention of the specific provisions, the interpretation must be construed consistently with the changing social attitudes. The reason behind this is that, any beneficial and social statute is intended to protect certain class of persons. *Eg. Labour and Industrial Laws are beneficial legislation intended for causing social justice or welfare of the subjects. Hence, while interpretation any legislation of social justice, the existing social conditions should be taken into consideration to resolve the existing difficulties.*

Employees' State Insurance Corp. vs. R. K. Swamy, [(1940) 1 SCC 445].

The State Government extended the provisions of the Employee' State Insurance Act, 1948 to hotels, shops, cinemas and theatres and newspaper establishments. The State Government had issued notifications to that effect. The petitioners questioned about the application of the provisions of the Act to an advertising agency and a shipping company.

The Court held that the Employees' State Insurance Act, 1948 is an beneficial legislation intended for the benefit of the employees working in the various business establishments. Hence, the word 'shop' is to be construed, including the activity in a shipping company and an advertising agency.

2. In *National Insurance Company vs. Swaran Singh,* [(2004) 3 SCC 297], it has been held that a beneficial statute, as is well known, must receive a liberal interpretation.

3. In *Vaijanath vs. Guramma,* [AIR 1999 SC 555], it has been held that a remedial Act should be given beneficial interpretation.

4. In *Regional Executive, Kerala Fisherman Welfare Fund Board vs. Fancy Food,* [AIR 1995 SC 1620], it has been observed that the acts designed to raise welfare funds for weaker sections are construed liberally and given an expensive construction.

5. In *Lucknow Development Authority vs. M.K.Gupta,* [AIR 1994 SC 787], it has been observed that in case of social benefit oriented legislation like Consumer Protection Act, 1986 the provisions of the Act, have to be construed in favour of

consumer to achieve the purpose of enactment but without doing violence to the language.

In *Kamla Kanilal vs. State of Maharashtra,* [(1999) 1 S.C.C. 292], the Supreme Court observed that after the decision in Maneka Gandhi's case in 1978, Art-22(5) of the Constitution has to be construed liberally and meaningfully so as to permit the legislature to impose only the minimum possible curbs on the personal rights of a citizen, under preventive detention. For the procedure under Art-21 to be fair just and reasonable, the expression effective representation appearing in Art-22(5) must be so construed that a real and meaning opportunity to the detenue is provided to explain his case to the detaining authority in his representation. It was held, therefore, in this case, that non-supply of documents and materials to the detenue along with the detention order and a delay of twenty-five days in disposing of the presentation of the detenue without any explanation from the State will lead to the conclusion that the continued detention of the detenue is void.

In *Zakia Begum vs. Shanaz Ali,* [AIR 2010 SC 3385], the Supreme Court held that the Karnataka Rent Act, 2001 is a socio-economic legislation and is desired to given protection to certain classes of tenants. A tenant who is playing deemed rent or standard rent above Rs. 3500/-per month in respect of his tenanted premises on the day of the commencement of the Act is outside the purview of the Act.

In *U. Unichoyi vs. State of Kerala,* [AIR 1962 SC 12], Minimum Wages Act, 1948 was in question before the Supreme Court. It empowered the State Government to fix minimum wage. The Act also did not provide for taking into consideration, the paying capacity of employer. It was challenged before the Supreme Court as violative of Article 19(1)(g) of the Constitution of India. It was held that the Act is valid and the Act being beneficial legislation must be construed in favour of workers.

In *Surendra Kumar Verma vs. The Central Govt. Industrial Tribuanal-cum-Labour Court, New Delhi,* [AIR 1981 SC 422] It was held that, any labour welfare legislation should be interpreted in such a way so as to achieve the purpose and objects underlying the provisions of the Act. Any Such legislation must receive a board interpretation, where such legislation is intended to provide relief against certain kinds of mischief.

The courts, while interpreting the provisions of a statute should strive for arriving at a balanced view by adopting the rule of beneficent or liberal Construction so as to ensure its full meaning to all parts of the provisions in the statute. Thus, it can be rightly said that beneficial construction is one of the modes of pacifying the clarion call of burning hearts.

LECTURE XIII

CONSTRUCTION TO AVOID CONFLICT WITH OTHER STATUTES

(Rule Applicable in Interpreting Two Conflicting Provisions in the Statute)

The word 'conflict' means "inconsistency or difference or disagreement or repugnancy between two concepts or provisions of the same statute or two different statutes the court while interpreting a statute /construing an enactment, should check that whether there is any inconsistency between two provisions/part of the same statute or inconsistency of any provision with any other statute. When the interpretation of a statute leads to conflict between two provisions, the court should not construe such provisions and should, if possible be avoided.

Sometimes one finds two or more enactments operating in the same field and each containing a non obstante clause stating that its provisions will have effect 'notwithstanding anything inconsistent there with contained in any other law for the time being in force. The conflict in such cases is resolved on consideration of purpose and policy underlying the enactments and the language used in them.

The proper method of construing a statute which has different provisions is not to come to a conclusion that one part overrides another part of that statute but to try and see whether different parts of a statute can be reconciled so as to present one complete picture.

Construction to avoid conflict with other provisions or the rule applicable in interpreting two conflicting provisions in a statute can be explained with reference to the following heads.

(i) Superfluous word

(ii) Statute should be read as a whole

(iii) Sub-sections

(iv) The use of 'non-obstante clause'

(v) One provision should not be rendered nugatory

(vi) Principles applicable to constitution

(vii) Reconciliation not to be affected in any case

(viii) Conflict between general and special provisions of a statutes

(ix) Effect to reconcile inconsistent statutes

(x) Repugnancy between two statutes

(xi) Conflicts between General Acts and Special Acts

(xii) Conflict between statute and rules made thereunder

(xiii) Conflict between Law and Practice

(xiv) Conflict between Special Act and Another

(xv) Conflict between natural right and provision of law

(i) Superfluous word :--The word 'superfluous' means "unnecessary or unneeded or surplus, not required". Conflict (or inconsistency or repugnancy) between two provisions of statute may arise (take place) due to usage of superfluous words is the provisions of a statute. The legislative, while enacting a statute might use some superfluous words by way of abundant caution. Then, the court, while interpreting/ construing the statute must scrutinize the provisions of the whole statute so as to discard the superfluous word, if any so as to remove the conflict/inconsistency.

(ii) Statute should be read as a whole :--The judges, while interpreting a statute must read the provisions are of the statute as a whole. The provisions are to be read with other related provisions in the act itself. Otherwise i.e, if the provisions in the statute are read in isolation it may give scope for conflict/inconsistency/repugnancy between two provisions of the statute. Therefore, the whole statute has to be viewed and compared in all of its apart so as to make every part/ provision to be consistent and effectual.

(iii) sub-sections : Every statute contains sections and sub-sections. The sub-section of a sections are inter-dependant and must be read as parts of an integral whole. An attempt should be made, as for as possible to reconcile them so as to

avoid repugnancy. In case the repugnancy between two sub-sections of a section cannot be avoided, then the question arises is which of the two conflicting sub-sections shall prevail over the other. Then, which of the two can remove the inconsistency/repugnancy shall be preferred.

(iv) The use of 'non-obstante clause' : It is quite obvious in a statute, one section speaks in affirmative and other in negative. In other words, we find usually in a statute /act, one section takes away, what some other section confers stating that "notwithstanding anything contained in section...so and so, this or that will happen". This clause is known as 'non-obstante clause'. If the two sections are not clear resulting in conflict, it is the duty of the court to do whatever best is possible to harmonise the two sections and to remove the repugnancy.

(v) One provision should not be rendered nugatory : The word 'nugatory' means "worthless or no real value. Where two provisions in a statute conflict with each other, both of them cannot stand as they should. Then, both the provisions, if possible, be interpreted that effect can be given to both and that a construction, which renders either of them inoperative and useless should not be adopted except in the last resort. In simple words, the provision, which is nugatory *i.e.* worthless and inoperative should not be adopted except in the last resort.

(vi) Principles applicable to constitution : Constitution is supreme law of the land. Any Act/enactment/ legislation/law passed by the parliament (supreme legislature) or its subordinate authority (state legislature or local body like municipal council under the power of delegated legislation) must be in consonance with (in accordance with) the provisions of the constitution. In other words, any Act passed by the state legislature or its subordinate body must be in accordance with the provisions of the constitution. Otherwise, it is declared to be unconstitutional. The fundamental principle of construction is that two provisions in a statute regulating the same subject should be construed to be consistent with each other. If this be true of an ordinary statute, it is equally true of such a ruling instrument as the constitution.

(vii) Reconciliation not to be affected in any case : The general rule of construction is that, particular provision in a statute is *prima facie* be interpreted as per the language

used n that provision with the help of other provisions of the statute. When the provision is capable of containing more than one meaning, it must be construed harmoniously so as to reconcile with each other

(viii) Conflict between general and special provisions of a statute : A statute may contain general provisions and special provisions inconsistency may arise between general provision and special of a statute. If a general provision is applied to neutralise a special provision on the same subject matter, the special provision should be read as a proviso to the general provision. If the general provision is inconsistent with the special provision, it (general provision) must not be applied when the specific provision is made for a particular purpose, it exclude the general provision as per the rules of construction.

(ix) Effect to reconcile inconsistent statutes : When two provision in a statute are mutually contradictory, they should be read together and to be interpreted/construed so as to obviate too apparent on inconsistency. The well settled rule is that all provisions of a statute shall be read together and construed harmoniously. When there is inconsistency between a section of a statute and the rules framed there under, harmonious construction has to be adopted so as to give effect to the intention of the legislature and to achieve the object of the act

(x) Repugnancy between two statutes : Inconsistency or repugnancy take place between two statutes. Where two Acts passed by the parliament and state legislature are inconsistent or repugnant, the latest expressions of the parliament (*i.e.* the later/new Act) will prevail provided the court is satisfied that the repeal of the earlier/prior act must flow from necessary implication .In simple words, where two statutes/Acts are inconsistent with each other, the provisions of the latest Act passed by parliament will prevail over the earlier/prior Act and the court is satisfied that the repeal of the prior act must flow from necessary implication.

(xi) Conflicts between General Acts and Special Acts : For speedy relief and quick disposal of cases, special acts are enacted in addition to the general acts. For instance, the Indian Contract Act, 1872, the Indian Evidence Act, 1872, The Indian Penal Code, 1860, the Code of Criminal

Procedure,1973 are general acts. Whereas, the Dowry Provision Act, 1961, the Medical Termination of Pregnancy Act 1971, the Protection of Women from Domestic Violence Act, 2005 are Special Acts. The Dowry Provision Act 1961 (Special Act) is Corresponding to the Indian Penal Code, 1860 since both the enactments commonly deal with the same offences. For example, dowry death. Hence, the same/similar provisions are enshrined in both the Acts in respect of a particular offence. In case of such two statutes on the same subject, the rule of construction to be adopted shall be as for as possible to be consistent. In case of inconsistency between general act and special act with regard to a particular provision, one to give way will be the general provision. In such a case, the later special Act will be taken to have amended the earlier General act in so far as the matters dealt with in the specific (Special) Act are concerned. (As stated earlier, one of the fundamental rules of construction is, the later Act supercedes the earlier Act)

(xii) Conflict between statute and rules made there under : The rules in a statute must be in consonance with the statute .In other words, no rule can be framed in conflict with or in derogation from the statute .where a rule in a statute is broad *i.e.* inconsistent/conflict with the main statute, it (the rule) must give way and its construction should be in consonance with the statutory provision .In other words, the section of a statute will be prevail over the rule of the statute .the court, while interpreting /construing the statute should endeavour to reconcile between the statute and rules there under so as to make it (the rule) consistent with the specific provision.

(xiii) Conflict between law and practice : The court while interpreting a statute, are bound to follow the law of the land irrespective of practice *i.e.* the courts need not take into considerate the practice.

(xiv) Conflict between one special Act and another : A Special statute does not derogate from another special statute without express word of abrogation. When both statutes containing non-obstante clauses are special statutes an endeavour should be made to give effect to both of them. If that is not possible then the legislation enacted later in time shall prevail.

(xv) Conflict between natural right and provision of law : where there is a conflict between a basic natural right borne out of natural justice and a provision of law, general or special, it is also settled that the former should prevail, even though the right is not specifically mentioned in the list of right guaranteed under the constitution.

LECTURE XIV

DOCTRINE OF HARMONIOUS CONSTRUCTION

This lecture covers the following heads-

1. Harmony : Meaning
2. The Rule/Doctrine of Harmonious Construction : Meaning
3. Object of Harmonious Construction and
4. Principles of Harmonious Construction.

* * * * *

1. Harmony: Meaning: The dictionary meaning of the word 'harmony' is "agreement in opinion or pleasing combination". The word 'harmony 'literally means, "to maintain a balance between two concepts/provisions/subjects of equal importance in the event of their conflict with each other. The courts, while interpreting a statute happens come across a conflict between two provisions of equal importance in the statute must endeavour to maintain a balance i.e harmony between the two so as to arrive at/achieve the object of the statute "Harmony" is a provision that rules and regulations made under an Act should be in harmony with the provisions of the Act means that no such rule or regulation shall do violence either to the declared law or to the policy or manifest purpose of that Act. The word 'Harmony 'in this connection does not mean an exact coincidence in all possible point of comparison.

2. The Rule/Doctrine of Harmonious Construction Meaning : The term 'Harmonious Construction 'would refer to such a construction by which harmony or oneness amongst various provisions of an enactment is arrived at. It is called Harmonious Construction When two provision in the same statute or in different statutes contain different purposes to achieve, are brought harmony between them.

The Rule of Harmonious Constriction (A Construction to Avoid absurdity is permissible)

(i) Despite the best endeavour by legislature with a strong inclination to serve the public purpose, there are certain circumstance in which, two provision in a statute are inconsistent (conflict) with each other.

(ii) It gives rise to "intra-statutory conflict" leading to "head-on-clash "with the legislative object. In other words, the conflict/inconsistency between the two provisions of equal importance gives room to defeat the legislative object, unless harmony is maintained between both the conflicting provisioning such situation ,both the provisions should be interpreted, as far as possible, by giving equal effect/ importance to both of them so as to arrive at harmonious construction (for instance, where a conflict between fundamental right and directive principal of state policy takes place, court maintain harmony between the two by keeping in view the circumstances of the case i.e is some cases fundamental right is preferred over the directive principle ,while in other cases directive principle is given priority over the fundamental rights. In other words, both are given equal importance i.e harmony in maintained between the two. In other words, the rule of interpretation requires that the courts ,while interpretation requires that the court, while interpreting two inconsistent/ repugnant provisions of a statute, should make an effort so as to harmonise the conflicting/ inconsistent provisions so that the purpose of the act will be given effect to both the provisions

(iii) This type of umpiring technique used by the court is called "Harmonious construction". It is to be noted that harmonious construction is possible, where two provisions in a statute are distinct and separate i.e conflict/ inconsistency with each other. The courts while interpreting a statute, are permitted of avoid absurdity and apply harmonious construction.

The supreme court in *State of Punjab vs. Ajaib Singh*, (AIR 1953 SC 10) : observed that, when two distinct constructions are possible, the court must adopt that, which will ensure smooth and harmonious working of the constitution and eschew the other, which will lead to absurdity or give rise to practical inconvenience.

Keshavananda Bharati vs. State of Kerala, (popularly known as Fundamental Right case: AIR 1973 SC 1461): In this case, the supreme court, by construing of the word 'law' occurring in clause (2) of Article 13 of the Indian constitution to mean 'ordinary law of the land 'and not the amendment of the constitution. The court harmonized the article 13(2) with article 368 of the constitution, which empowers the parliament to amend the constitution.

In the words of Venkatarama Aiyer, J., "the provisions of one section of a statute cannot be used to defeat those of another unless it is impossible to reconcile them. Where two provisions of an enactment cannot be reconciled with each other, they should be so interpreted that, if possible, the effect should be given to both. This is what is known as rule of Harmonious construction

In word of Shah, J., "it is a recognised principle of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute and which effectuate the object of Legislature."

According to the Doctrine of Harmonious construction ,if two conflicting constructions are possible, the court must adopt that which ensures smooth and harmonious working and eschew the other which will lead to absurdity or give rise to practical inconveniences or make well-established provisions of exiting law nugatory, or leads to confusion or friction or contradiction between various provisions or undermines or tends to defeat or destroy basic scheme and purpose of the enactment, and every attempt be made to harmonise the two provisions so as to make co-exit and only if it is not possible to do so, once can be made to yield to the, apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject matter of the enactment itself.

In *MSM Sharma vs. Shri Krishna Sinha,* [AIR 1959 SC 395], the rule of harmonious construction was applied to resolve conflict between Article 19(1)(a) and Article 194(3)of the constitution of India .It was held that the right of freedom of speech guaranteed under article 19(1) is a to be read subject to power, privileges and immunities of houses of Legislature as declared by Article 194(3)

In *M.J. Exports Limited vs CEGAT,* it was held that harmonious construction should be reported to making the provisions meaningful in the context.

In *Keshav Chandra Joshi vs U.O.I,* it was stated that the harmonious construction should be applied to statutory rules and courts should avoid absurd or unintended results.

Similarly, Invoking the rule of harmonious construction, the supreme court in *K.M. Nanavathi vs .State of Bombay* held that the power of Governor to pardon adumbrated in Art-161 will not be available during the period when the matter is sub-justice and conflicts with the power of the court under Art-142 of Constitution of India.

The supreme court of India reiterated the principle that when there is a possibility of more than one construction, such construction must be given effect which is conducive to a smooth and harmonious working of the statute.

In *Chief Justice of Andhra Pradesh vs Digitule and another,* the Deputy Registrar of the high court and a subordinate judge were compulsorily retired on attaining the age of fifty years by the chief justice of high court and the state Govt. respectively. Respondent filed petitions against this before the Administrative Tribunal constituted under Art-371-D of the constitution by the president of India by the Administrative Tribunal Order, 1975 .The Tribunal held the retirement of the Deputy Registrar illegal because as the High Court was their appointing authority, retirement order could not be passed by the Government .But before the supreme Court, the appellants argued that the officers and servants of the High Court as well as members of the judicial services were not subject to Art-371-D. Therefore, the Administrative Tribunal had no jurisdiction to deal with such cases. It was held by the Supreme court that when more than one constructions is possible, then effect must be given to that

interpretation which ensure a smooth and harmonious working of the statute

3. Object of Harmonious Construction : The very object behind the rule/doctrine of harmonious construction is to avoid any confrontation between two enacting provisions of a statute and to construe the two in such a way to harmonize them .The basis is that ,the legislature would never provide/ enact two conflicting provisions in the same statute .The reason is, it (if the legislature provides/enacts two conflicting provisions in the same statute) amounts to self-contradiction so ,if any inconsistency is found, it should be considered unintentional and the inconsistency should be cured by applying the rule/doctrine of harmonious construction.

4. Principles of Harmonious construction : In *Sultana Begum vs. Prem Chand Jain,* [(1997) 1 SCC 375], the supreme court laid down the following principals to harmonise the conflicting provisions:

(i) It is the duty of the court to avoid a head-on clash between two section of the Act to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(ii) The provisions of the one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(iii) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of 'harmonious construction'.

(iv) The court have also to keep in mind that an interpretation which reduces one of the provisions as a 'dead letter' or 'useless lumber' is not harmonious construction.

(v) To harmonise is not to destroy any statutory provision or to render it otiose.

In *Moinuddin vs. State of Uttar Pradesh*, [AIR 1960 All. 484, p. 491], Dhavan J. observed that "the choice between two alternative constructions should be made in accordance with well-recognised canons of interpretation:

Firstly, if two constructions are possible the court must adopt the one which will ensure smooth and harmonious working of the constitution and eschew the other which will lead to absurdity or gives rise to practical inconvenience or make well-established provisions of existing law nugatory.

Secondly, constitutional provisions are not to be interpreted and applied by narrow technicalities but as embodying the working principles for practical Government.

Thirdly, the provisions of a constitution are not be regarded as mathematical formulae and that their significance is not formal but vital. Hence practical considerations rather than formal logic must govern the interpretation of those parts of a constitution which are obscure.

Fourthly, in choice between two alternative constructions, the one which avoids a result unjust or injurious to the nation should be preferred.

Fifthly, before making its choice between two alternative meanings, the court must read the constitution as a whole, take into consideration its different parts and try to harmonise them.

Sixthly, above all court should proceed on the assumptions that no conflict or repugnancy between different parts was intended by the framers of the constitution.

Other principles or rules expressed by Courts are as given below:

(i) The rule of harmonious construction is to avoid a possible conflict in various provisions of a statute.

(ii) The court has the duty to harmoniously construe different provisions of any Act or Rules or Regulation, if possible and to sustain the same rather than strike down the provisions outright.

(iii) Harmonious construction should be consonance with the intention of legislature

(iv) An Act is to be read as a whole ,the different provisions have to be harmonised and the effect is to be given to all them.

(v) The court should give effect to all the provisions of a statute and for that any provisions of the statute should be construed with reference to the other provisions so as to make its workable. A particular provision cannot be interpreted to defeat the another provision made in that behalf under the statute.

(vi) While construing provisions of statute, apparent inconsistency of those provisions with the provisions of another related statute harmonised and reconciled in the light of the object and purpose of the legislation in question.

(vii) The court while construing a provision should not easily read into its words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make its meaningful.

(viii) Harmonious construction is applicable to subordinate legislation also

(ix) Harmonious construction is not possible where two provisions are quite distant and separate.

(x) In applying the harmonious construction, the courts shall statutory rules, however, they should avoid absurd or unintended results.

(xi) A statutory provision which in effect purports to negate author provision in the same statute must be harmoniously construed unless such construction violates the word of the provision or policy of the Acts.

(xii) When a harmonious construction between two provisions of a statute is possible which

furthers the object of the statute, then the same must be preferred to a construction which leads to a conflict between the two provisions.

(xiii) The general law will be superseded by the specific law for harmonious construction.

There is one exception to this general rule. A state law having extra-territorial operation will be valid if it can be sustained on the basis of the doctrine of territorial nexus. The doctrine of territorial nexus implies that the object to which the law applies need not be located within the boundaries of the state. It is enough if it has sufficient territorial connection with the State. In other words, although if it has sufficient territorial connection with the State. In other words, the territorial limits of a State, yet the State law will be valid if there exists a real connection or nexus between the state and the objects. This doctrine has generally been invoked in tax cases.

In *Wallace Brothers and Co. Ltd. vs. Income-tax Commissioner, Bombay,* AIR 1948 PC 118, the company which was incorporated in England was a partner in a firm in India. The company made an overall profit and the Indian Income Tax authorities levied Income Tax on the entire income of the company. It was held that imposition of tax was valid as there was sufficient territorial nexus between India and the company.

In *Tata Iron and Steel Co. vs. State of Bihar,* AIR 1958 SC 452, the Bihar Sales Tax Act, 1947, which provides for levy of sales tax on the sales of their goods in outside was challenged on the ground of extra- territorial operation. The Court upheld the Act on the ground that there was sufficient nexus between the objects to which it applies and the state of Bihar which was to levy the tax.

In *State of Bombay vs. Narayandas Mangilal,* AIR 1985 Bom. 68, it has been observed that whether or not sufficient territorial nexus exists, is a question of fact and determined by the Court in each case having regard to the facts and circumstances of the case and the liability sought to be imposed must be pertinent to that connection.

5. The Principle or Doctrine of Severability or Seperability :--The Doctrine of Severability emerges from the

express language of Article 13, which provides that 'a law is void only to the extent of the inconsistency or contravention' with the relevant fundamental right. The expression 'Severability or Severability' literally means "Separation". For the purpose of Article 13 of the Indian Constitution, it means "to separate the valid portion of the law from the invalid portion, where an Act or legislation contains both the void and valid provisions." The main object of the doctrine is to retain the Act or legislation in force by discarding/deleting the void provisions.

Article 13 (1) of the Constitution declares that "all laws in force kin the territory of India, immediately before the commencement of this constitution, which are inconsistent with the fundamental rights under Part-III, shall be void to the extent of such inconsistency."

Where a part of the Statute is found inconsistent with Part-III of the Constitution and is declared void/unconstitutional, then the question arises is, whether the whole of the Statute is to be declared void or that part of the Statute inconsistent with Part-III alone shall be declared void?

The Supreme Court in many cases answered in favour of the latter part of the above question *i.e.*, that part of the statute inconsistent with Part-III alone shall be declared void.

A.K. Gopalan vs. State of Madras, AIR 1950 SC 27-1950 SCJ 174 – In this case, the Supreme Court struck down Sec. 14 of the Preventive Detention Act, 1950 on the ground that it is violative of the fundamental right guaranteed under Article 22 of the Constitution. The Court severed (separated) that section from the impugned Act (Preventive Detention Act) and held the remaining part of the impugned Act could remain unaffected (*i.e.*, the Act minus Sec. 14 is declared valid).

The Supreme Court in *R.M.D.C vs. Union of India* (AIR 1957 SC 628) – has detail laid down the criteria relating to the doctrine observing that –

> "when the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on that become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separated from what is invalid and that it a question

which has to be decided by the Court on a consideration of the provisions of the Act."

In *State of Bombay vs. F.N. Balsara,* AIR 1951 SC 318 – The Supreme Court held that though 8 sections of the Bombay Prohibition Act, 1949 were *ultra vires* for infringement of fundamental rights, the rest of the Act would continue.

In *Minerva Mills Ltd. VS. Unon of India,* AIR 1980 SC 1789 – the Supreme Court struck down Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 as *untra vires i.e.,* beyond the amending power of the Parliament. These two sections were declared void and severed from the Act so as to make the remaining part of the Act constitutionally valid.

In *D.S. Nakara vs. Union of India,* (AIR 1983 SC 130) – it was held that where the Act remained valid while the invalid portion of it was declared invalid because it was severable from the rest of the Act.

6. The Doctrine of Eclipse :--The term 'Eclipse' literally means "to hide wholly or in part" or "throwing into the shade". The doctrine of 'Eclipse' envisages that a pre-constitutional law inconsistent with a fundamental right should not be wiped out altogether from the statute book after the commencement of the constitution as it constituted to exist in respect of rights and liabilities, which had accrued before the date of the Constitution (*Keshavan Madhava Menon vs. State of Maharashtra,* AIR 1951 SC 128). The doctrine of eclipse aims to validate a statute, which remains dormant as it is over-shadowed by the rights. It is based on the principle that a law, which violates fundamental rights is not nullity or *void ab initio* but becomes only unenforceable. Such statute/law shall not be wiped out totally from the Statute Book.

According to Article 13 (1) of the Indian Constitution, "All laws in force in the territory of India, immediately before the commencement of the constitution, which are inconsistent with the fundamental rights under Part-III, shall be void to the extent of such inconsistency."

Where a statute is found inconsistent with the provisions of the fundamental rights (under Part-III of the Constitution), such statute may be declared void. However, such statute is not *void ab initia.* It cannot be declared void/dead unless it is abolished by the Parliament and shall be treated as sleepy.

The inconsistency of such statute (passed before the constitution) can be removed by as amendment to that effect (after the commencement of constitution) so that the statute becomes valid and enforceable.

Bhikaji Narain Dhakras vs. State of M.P., (AIR 1955 SC 781) – In this case, the Supreme Court held that any existing law inconsistent with fundamental right, which becomes inoperative from the date of constitution is not dead totally. It is only overshadowed by the fundamental right. This interpretation is an illustration of the application of the doctrine of eclipse.

In *Deep Chand vs. State of U.P* (AIR 1959 SC 648) – the Supreme Court has held that a post-constitutional law made under Article 13(2) which contravenes a fundamental right is nullity from its inception and a still-born law. It is void *ab initio.* The doctrine of eclipse does not apply to post-constitutional laws and therefore a subsequent constitutional amendment cannot revive it.

It *Mahendra Lal Jain vs. State of U.P.,* (AIR 1963 SC 1019) – the Supreme Court has held that the doctrine of eclipse applies only to pre-constitutional law under Article 13(1) and not to post-constitutional law.

However, in exceptional cases the doctrine of Eclipse may be applied to post-constitution Law. In *State of Gujarat vs. Ambica Mills,* (AIR 1974 SC 1300), it has been held that a law which takes away or abridges the Fundamental Rights which is available only to citizens (and not available to non-citizens) is void only against the citizens and will remain in operation as regards the non-citizens.

Thus a post-constitution law which takes away or abridges the Fundamental Rights is not void or non-existent in all cases and for all purposes. Such a law will be void and ineffective only against the persons whose Fundamental Rights which are available only to citizens it will be void against citizens but will be valid against non-citizens.

In *Dularey Lodh vs. IIIrd Additional District Judge, Kanpur,* (AIR 1984 SC 1260) – the Supreme Court applied the doctrine of eclipse to post-constitution law even against citizens.

7. The Doctrine or Principal of Prospective Overruling :--The India

The doctrine of prospective over-ruling enables the court to over-rule an earlier decision and restrict the operation of the new ruling only to the future cases or future transactions. The of prospective overruling is well established in the USA in cases: *Great Northern Railway vs. Sunburst Oil & Ref. Co.* [77 Led 360] and *Linkletter vs. Walker,* [(1965) 381 US 618].

The doctrine of 'Prospective overruling' was develop by the Supreme Court of the USA to shield the past transaction, when a new view is adopted by the Court and the doctrine envisages that a well established precedent may be overruled from the future date and not retrospectively and the Court retained the power to decide the balance of all relevant considerations to decide whether a decision overruling a previous precedent should be applied prospectively. Retrospective overruling may cause administrative inconvenience in some situation and, by disturbing vested rights, may cause hardship to those who may have acted on the basis of the old principle of law. The doctrine of prospective overruling seeks to avoid such harsh result. When the court declares prior to such decision but may operate with respect to transactions and rights arising after the said decision.

The Indian Constitution does not expressly or by impliedly speak against the doctrine of prospective overruling. But, Articles 32, 141 and 142 of the constitution are enacted in such wide and elastic terns as to enable the supreme court to formulate legal doctrine to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. Nor is there any statutory prohibition against the court refusing to give retrospectively to the law declared by it. However, the doctrine of prospective overruling can be invoked only in matters arising under the constitution and it can be applied only the supreme court as it has constitutional jurisdiction to declare law binding on all courts in India.

The Supreme Court, in *Golak Nath vs. State of Punjab,* [AIR 1967 SC 1643] applied the doctrine of prospective overruling to save all the pervious constitutional Amendments prior to the said decision. The Chief Justice Subba Rao referred to the American doctrine of 'Prospective overruling' and said that it is a modern doctrine which is suitable for a fast moving society, He has said that it does not do away with the doctrine of 'Stare-decisis' but confines it to past transactions. It is true

only in one sense that the court only declares the law, while in strict theory it may be said that the doctrine involves in making of law. What the Court really does is to declare the law but refuses to give retrospectively to it. The court, he said, finds law and does not make law. It finds law but restrict its operation to the future only. It enables the court to bring about a smooth transition by correcting its error without disturbing the impact of those errors on the past transactions. The Chief Justice has said that as this Court for the first time has been called upon to apply this doctrine, they would lay down the following propositions:

(1) The doctrine of Prospective overruling can be invoked only in matters relating to constitution

(2) It can be applied only by the highest court of the Country

(3) The scope of retrospective operation of the law declared by the supreme Court superseding its earlier decisions is left to its discretions to be moulded in accordance with the justice of the cause or matter before it.

In *State of H.P. vs. Nupur Private Bus Operations Union,* [AIR 1999 SC 3880] the supreme Court has made it clear that the doctrine of prospective overruling is not available to the High Courts. Hence the doctrine of prospective overruling cannot be utilised by High Courts.

The doctrine of prospective overruling has been applied by the supreme court in subsequent cases namely: *Minerva Mills vs. Union of India,* [AIR 1980 SC 1789]; *Waman Rao vs. Union of India,* [AIR 1981 SC 271], *Raymond Ltd. vs. Madhya Pradesh Electricity Board,* [AIR 2001 SC 238] etc.

LECTURE – XV

EFFECTS OF CHANGES IN STATUTES

Earlier, there was no distinction as to trot, crime, breach of contract etc., After the appointment of law commission in 19th century, the process of codification was taken up and various branches law have been codified since 19th century *i.e.*, in 1872, to till date. Some of the Acts (Enactments/ Legislations/statutes) are centuries old and were drafted keeping in view the socio economic conditions prevailing at that time and hence they need to be changed/revised/ repealed/abolished/replaced by new Acts. Certain changes can be incorporated in to the old Acts by passing the Amendment Acts (*E.g.*, so many provisions of the Constitutional Law of India have been changed from time to time vide 100 Amendment Acts till 2015. Similarly, the Companies Act, 1956, has been repealed and replaced by the Companies Act, 2013). Therefore, it is necessary to bring about changes in the Acts so as to meet the changing circumstances from time to time, which result in certain effects. The effects as a consequence of changes brought about in the Acts/statutes can be studied under the following heads—

1. Effect of Repeal or Interpretation of Repealing Statutes.

2. Effect of Amendments to Statutes or Interpretation of Amending Statutes.

3. Conflict between Parent Legislation and Subordinate (Delegated) Legislation (Parent Act and Delegated Legislation)

4. Methods of Interpreting Substantive and Adjective or Procedural Laws or Interpretation of substantive and Procedural Law.

5. Interpretation of Constitution.

This lecture deals with 'Effect of Repeal and reaming four topics are discussed in the following lectures.

EFFECTS OF REPEAL OR EXPIRY AND REPEAL OF STATUTES OR INTERPRETATION OR REPEALING

SYNOPSIS

This lecture covers the following heads-

(1) Repeal meaning and definition

(2) Object of Repealing Acts.

(3) Kinds of Repeal

  (a) Express Repeal and

  (b) Implied Repeal or Repeal by Implication

(4) Test of Implied Repeal

(5) Repeal by Desuetude (DESUETUDE)

(6) Revival of Legislation or Revival of Statute

(7) Effects or Consequences of Repeal

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1. Repeal : meaning and Definition : The word 'Repeal' literally means "to revoke or to cancel". In legal sense, it means "to call or to abolish a statutes". The expression 'repeal of a statute' connotes "the abrogation or obliteration of one statute by another". Once a statute is repealed, it must be considered as completely wiped off from the statute books. In essence, there is no distinction between repeal and amendment. The natural meaning of the term 'amendment' is as altered by additions, substitutions and omissions. Substitution of a provision means "repeal of an earlier provision and its replacement by the new provision". Repeal may be of whole Act (total) or a part only (pro tan to repeal) E.g., Repeal of the Companies Act, 1956 by the Companies Act 2013 is an example the repeal of whole Act. Repeal of section 76 to 123 of the Indian Contract Act, 1872 by the Sale of Goods Act, 1930 is an example of the repeal in part *i.e.*, pro tan to repeal.

According to Halsbury's Laws of England, the term 'Repeal' is defined as-

"To repeal an Act I to cause it to cease to be a part of the corpus juris or body of law .To repeal an enactment

in the Act is to cause it to cease to be in law a par of the Act containing .The general principle is that, except as to transaction past and close ,an Act or enactment which is replaced is to be treated thereafter as if it had never existed. However, the operation of the principle is subject to any savings made, expressly or by implication, by the repealing enactment ,and in most cases it is subject also to the general statutory provisions as to the effects of repeal."

As per Black's Law Dictionary (7th Edition), 'Repeal' is defined as-"abrogation of an existing law by legislative Act."

A statute may be a temporary statute or a perpectual statute. A temporary statute is one, which remains in force for a particular or specified period of time. It stands abolished/ repealed on expiry of the specified time. Where as a perpectual statute is one, which remains in force until it is repealed by express provisions or by implication or by an act of legislative or by a Repealing Act. A Repealing Act is one, which expressly or by necessary implication revokes another statute. E.g., the companies Act 2013 repealed the companies Act 1956. Similarly, the code of criminal procedure, 1973 repealed the code of criminal procedure, 1898. Every legislature has power to repeal an Act just like how it has power to enact. In other words, the power of legislature to repeal a law (an Act/ Enactment) is co-extensive with that of its power to enact the law (An Act/Enactment). However, it is to be noted/borne in mind that the Union legislature (parliament) or state legislature can delegate its power to enact to the subordinate legislature, but cannot delegate its Power to repeal Relevant case on this point is—

Tika Ramji vs State of U.P (AIR 1963, SC 1561, 1565) In this case, the question of the power of the parliament under Article 254(2) of the constitution to repeal a state law was involved .It was held by the supreme court that parliament has the power to repeal, a state Law and such a power cannot be delegated to an executive authority, such power of parliament is subject to certain limitation power to repeal.

2. Object of Repealing Acts :--The object of Repealing Acts is not to change the existing law, but to incorporate/ brought about appropriate changes so as to cater the changing conditions social, economic and cultural from time to time

Repealing Acts are designed for editorial revision by deleting dead/outdated matter from the statute book. Further, the object of repeal and re-enactment is to get rid off some obsolete matters in the statute. The courts have to look into the provision of the new Act for determining whether the new Act indicates a different intention. The main object of repealing and amending Acts is editorial revision by discarding/deleting unnecessary portions and inserting/adding accurate information in the statutes book.

3. Kinds of Repeal :--The legislature (Parliament) is empowered not only to enact any law, but also to repeal the same. The legislature can repeal a law/Act/Statute in two ways. In other words, there are two kinds of repeal namely—

(A) Express Repeal : A statute may be a temporary statute or perpectual (permanent) statute. A temporary statute, which is enacted for a particular period of time or fulfilment of an object, stands repealed by expiry of the time or fulfilment of object.

Keshavan Madhava Menon vs. The State of Bombay, (AIR 1951 SC 128) : It was held in this case that, on expiry of a temporary statute, no further proceedings can be taken under it, unless the statute itself saved the pending proceedings.

Where as a perpetual statute as a whole or in part (a provision or provisions thereof) can be repealed by subsequent distinct statute. The earlier statue, which is repealed is called repealed statute and the later statute, which repeals the earlier statute as a whole or in part is called 'repealing statute'.

The word express means "clearly and definitely statute". The expression express repeal of a statute means "a particular statute or a provision these of is repealed by express words enacted in the subsequent (later/new) statue starting that the particular (earlier/previous/old) statute as a whole or a provision/provisions there of as the case may be is there by repealed". In simple words, a statute as a whole or a part there of *i.e.,* a provision or some provisions may be repealed by the subsequent/later/new statute by expressly stating there in the repeal of the earlier statute as a whole or a part thereof". In other words, when an earlier act/statute is repealed by later distinct and repealing Act, it is called "express repeal".

Where the Act repealed provides substantially for all matters contained in the Act affecting the repeal there is correspondence between the two Acts ; and the earlier Act would thus stand repealed. I tis not necessary that there should be complete identity between the repealing Act and the repealed Act in every respect. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. [*State of Rajastan vs. Mangilal Pindwal,* AIR 1996 SC 2181, p 2183 : 1996 (S) SCC 60].

Essential Elements or Ingredients : To constitute express repeal, the following ingredients (conditions) are to be satisfied-

(i) There must be a subsequent repealing Act.

(ii) Such subsequent Act must seek to repeal an earlier Act.

(iii) Specific word must be used in the subsequent Act showing clear intendment to effect repeal of any earlier Act.

(iv) Usually any one of the following forms are employed to intend the express repeal:

".....is hereby repealed."

".....shall cease to have effect."

".....shall be inoperative."

".....shall be invalid."

".....all provision inconsistent with his Act are hereby repealed".

In view of the above it is clear that an Act can be repealed by a later distinct repealing enactment or an enactment inconsistent and incompatible with the existing Act.

Form of words are necessary to bring about an express repeal.

In *R. vs. Longmead,* [(1975) 2 Leach 694 : 168 E R 448] it has been held that the legislature when they intend to pass, continue or to repeal a law are not bound to use any precise form of words.

(B) Implied repeal or repeal by implication : Implied repeal or repeal by implication literally means, "Repeal of a statute or a part thereof, inferred from the circumstances, where the subsequent/later statute is inconsistent or intended to be substituted therefor". To understand the term implied let us discuss an example in our practical life. When we enter into a restaurant to take food, it is implied that we have to pay bill for the food served. There need not be any board expressly stating that the customers have to pay bill for the food served. Similarly where repeal of an earlier statute as a whole or in part is not expressly stated in the later/subsequent/repealing statute, the implication to repeal is to be inferred from circumstances of the case with reference to inconsistency or substitution of the later statute.

Where there is no direct reference, the matter will have to be determined by taking into account the exact meaning and scope of the general words contained in the repealing clause and the principles of law, which govern the interpretation of the same. In the absence of an express provision of repeal, the continuance of an existing legislation is presumed. The burden to show that there has been repeal by implication lies on the party asserting the same. However, if the provisions of the later Act are inconsistent with or repugnant to the provisions of an earlier Act that they cannot stand together, the presumption is rebutted and repeal by necessary implication is inferred (*Municipal Council, Palari vs. T.J. Joseph,* (AIR 1963 3C 1561,p.1564)

The concept of Repeal by Implication is based on the legal maxim,

'Leges Posteriores Priores Contrarias Avrogant' (latter laws abrogate earlier contrary laws). This is a logical necessity, since two inconsistent laws cannot both be valid without contravening the principle of contradiction.

A repeal by implication is normally inferred under the following circumstances:-

1. When the subsequent Act is so inconsistent or irreconcilable with an existing earlier Act that one of the two can remain in force, or

2. When an Act cover whole subject of an earlier Act and is intended to be substituted therefor.

Repeal by implication is the consequence of contradictory or inconsistent legislation and should not be imputed to legislation or rule making authority.

4. Test of Implied Repeal : There is a presumption against a repeal by implication. The reason is, the legislature while enacting a law (Act/statute) has a complete knowledge about the existing laws on the subject matter. If the legislature does not provide any repealing provision, it implies that the legislature has an intention not to repeal the existing legislation/law.

Test of Implied Repeal: while inferring repeal of a statute by implication, the following aspects are to be considered—

(i) Whether the earlier and later laws are in direct conflict with each other.

(ii) Whether the Contradiction is so serious that no reconciliation is possible.

(iii) Whether subsequent Act is so inconsistent with earlier Act that both the laws cannot harmoniously co-exit and only one of the two can remain in force.

(iv) Whether two laws occupy the same field.

(v) Whether Legislature intended to lay down an exhaustive code in respect of subject matter replacing earlier law.

In *Delhi Municipality vs. Shivshanker,* [AIR 1971 SC 815], the Supreme Court has indicated that the test applied for determining repugnancy under Art. 254 of the Constitution-dealing with inconsistency between law made by parliament and laws made by state Legislature-may be applied for solving questions of implied repeal and that it should be seen :

(1) Whether there is direct conflict between the two provisions;

(2) Whether the Legislature intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law;

(3) Whether the law occupy the same fields.

In *Ratanlal Adukia vs Union of India,* (AIR 1990 SC 104), the Supreme Court considered that the doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. As such, the Court in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments.

Where a later enactment or a subordinate legislation is so inconsistent with or repugnant to an earlier enactment or subordinate legislation that the two cannot co-exist, then the latter one would effect of the former by application.

Ordinarily, a prior particular law or special law is not readily inferred to be repealed by a later general law. The basis of this doctrine is the principle of *'generalia specialibus non-derogant'* which means that general things do not derogate from special things .Therefore, in the absence of clear and unequivocal words, a special law cannot be abrogated by a subsequent general Act.

In *Damji v L.I.C.,* [AIR 1966 SC 135], it was held that Section 446 of Companies Act, 1956 is a general provision and Sections 15 and 41 of the life Insurance Corporation Act, 1956 are special provisions. Therefore the Company Court has no jurisdiction on the matters which fall within life Insurance Corporation Act, 1956.

5. Repeal by Desuetude

(The Doctrine of Desuetude)

As discussed earlier, a statute may be enacted for a specific period for a long period, till repealed by a subsequent repealing Act. The former is called temporary statute, while the letter is called Permanent or Perpetual statute. A temporary statute gets repealed on expiry of a particular period or fulfilment of an object/purpose, for which it is enacted where as a permanent or perpetual statutes will be repealed by a subsequent repealing statute. However, there are certain statutes, which are permanent/perpectual in nature but remain inoperative for a long time. In other words, the Act/ Enactment remains inoperative or dead since the Act/ provisions of the are not applied in courts for a long period. Such statute lose its binding force irrespective of express or

implied repeal by the statute making authority, *i.e.*, the legislature by which it was passed. In simple words, the statute is disobeyed over a long period and such disobey dance is called "Repel by Desuetude'

Desuetude is a process by which an Act of parliament (legislative) may lose its force without express repeal the Supreme Court in—

The *Municipal Corporation for the City of Pune and another vs. Bharat Forge Co. Ltd. and others,* (J.T. 1995 (3) S.C. 312) : held that there was objection in principle to apply the doctrine of desuetude to Indian Statutes as well. The doctrine (advances/promotes the cause of justice in our free India. Persons, who are prosecuted and punished for violation of law, which has become dead can be protected under the doctrine.

The Doctrine of Desuetude was rejected by supreme Court in state of *Maharashtra vs Narayan* (AIR 1983 SC 46 P. 52). But in *Municipal Corporation for City of Pune vs Bharath Forge Co., Ltd.,* (AIR 1996 SC 2856 and 2862) Supreme Court has applied this rule and Their Lordship of the Supreme Court observed that-

> "Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute repealed because of the process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the 'dead letter'. We think it will advance the cause of justice to accept the application of the doctrine of desuetude in our country also. Our soil ready to accept this principle: indeed, there is need for implementation because persons residing in free India, who have assured fundamental rights including what has been stated in Art-21 if the constitution must be protected from their being 'deal letter'. A new push is therefore required to be laid and trodden."

6. Revival of Legislation or Revival of Statute :-- When a new/later statute repeals an earlier statute, the new/

later statute is Called "Repealing statute" and the earlier/old statute is called "Repealed statute". However, there are certain cases/situations/circumstances, the repealing statute also may be repealed by a later/subsequent statute. For instance, statute B repeals statute A. Later, statute C repeals statute B. That is to say the repealing statute (B) is repealed by a subsequent repealing statute (C). In such a case, the repealed statute would automatically would come back in to force *i.e.*, it (repealed statute) gets revived. Provided, there is no intention on the part of the legislature, which made the legislation to repeal it and it is called "Revival of Legislation".

Crawford (Statutory Interpretation- Sec. 321 (P.654)) says that after a statute has been repealed ,it may again become operative as law, either through the enactment of legislation expressly reviving it, or by the operation of law.

'Chief justice Shaw in *Commonwealth vs Churchill, (Mass)* 2 Metc.118), reveals the historical basis for the general rule that the repeal of a repealing Act revives the pre-existing statute. The Court observed that "It is conceded to be maxim of the common law, applicable to the construction of statutes, that the simple repeal of a repealing Act, not substituting other provisions in the place of those repealed, revives the pre-existing law....We rely on usage and tradition and the well-known repositories of legal learning ,work of approved authority, to learn what are the rules of the common law; and we have no doubt that these were the great sources to which the above pregnant provision of our constitution refers."

In India, revival of statutes is governed by Sec-7 of the General Clauses Act, 1897, the first clause of which states that- 'in any Central Act or regulation made after the commencement of this Act, it shell be necessary, for the purpose of reviving ,either wholly or partially ,any enactment wholly or partially repealed ,expressly to state that purpose .The second clause of Sec-7 says that this section applies also to all Central Acts made after the third day of January, 1868, and to all regulations made on or after the fourteenth day of January, 1887. Sec-6(a) of the Act states that when this Act, or any Central Act or regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeals shall not revive anything not in force or existing at the time at which the repeals takes effect.

In *Ammerunnisa Begum vs Mahboob Begum*, (AIR 1995 SC 352), the Supreme Court while following Sec-7 of the General Clauses Act, 1897 held that once a repealing statute is itself repealed, that does not mean the revival of the repealed statute unless the language of the repealing statute so provides expressly

7. EFFECTS OR CONSEQUENCES OF REPEAL

The effects as a consequence of repeal of a statute are stated with reference to the following needs—

(A) Effects of Repeal under common Law

(B) General Effects of Repeal and

(C) Effects under the General Clauses Act, 1897

(A) Effects of Repeal under common Law: 'Common Law' means "Judge made Law" in England. Following are the effects of repeal of a statute under the common law in England.

(i) The repealed statute comes to end *i.e.*, completely obliterated as if the statute/Act had been enacted.

(ii) The repeal deprives all rights that arose under the repealed Act. In other words, the rights created/acquired under the repealed Act get extinguished.

(iii) The repealed state gets revived, if the repealing statute also is repealed by a subsequent repealing statute unless a country intention is indicated in the third statute.

(B) General Effects of Repeal: The following are some general effect or consequences of repeal of an enactment:

(i) Later Act abrogates prior one.

(ii) Repealed Act ceases to exist and does not remain in force with effect from the date of repeal.

(iii) Except in relation to the past and closed transaction, a statute after repeals is completely obliterated as if it had never been enacted. As such, all rights and causes of action under repealed statutes are destroyed.

(iv) When an Act is repealed, all laws passed under its stand repealed unless there is a saving provision.

(v) No proceedings can be commenced or continued under an Act after its repeal.

(vi) After repeal of a statute, the law which was in force at the commencement of the repealed statute, revives.

(vii) A law can be retrospectively amended to validate the transactions made under it, even after its repeal.

(viii) When an existing statute is repealed by a temporary statute, it is a temporary repeal. After expiry of such temporary Act, the repealed Act revives

(ix) The statute is completely obliterated and all right under repealed statute are destroyed.

(C) Effects under the General Clauses Act, 1897: Section 6 of the General Clauses Act, 1897 is a re-production of section 38 (2) of the Interpretation Act, 1889 of England relating to the effects of repeal.

Section 6 of the General Clauses Act, 1897 provides that:

Where this Act,or any (Central Act) or Regulation made after the commencement of this Acts, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not-

(a) Revive anything not in force or existing at the time at the time at which the repeal takes effect, or

(b) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

(c) Affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or

(d) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(e) Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid

And any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

As per section 3(19) of the General Clauses Act, 'Enactment' include a regulation and also any provision contained in any Act or in any such regulation.

Section 6 of the General Clauses Act applies to all types of repeals-express or implied; entire or partial; or whether it is repealed simpliciter or repeal accompanied by fresh legislation.

Section 6 of the General Clauses Act also applies when a temporary statute is repealed before the expiry, but it has no application when such a statute is not repealed but comes to an end by expiry.

Section 6 of the General Clauses Act on its on its own terms, is limited to a repeal brought about by a central Act or Regulation. A rule made under an Act is not a central Act or regulation and if a rules be repealed by another rule, Section 6 of the General Clauses Act will not be attracted.

Section 6 of the general Clauses Act only applies to repeals and not to omission .Similarly ,Section 6 of the General Clauses Act is not applicable to the repeal brought about by the Constitution itself on the reasoning that the Constitution is not Central Act or Regulation.

If a pre-Constitution law is repealed by the president under Article 373(2) of the Constitution ,the repeal will attract the operation of Section 6 of the General Clauses Act .The principle of the section have also been applied when a State legislation is overridden for reasons of repugnancy by a late Union Legislation.

LECTURE – XVI

EFFECTS OF AMENDMENTS TO STATUTE OR INTERPRETATION OF AMENDING STATUTE AND INTERPRETATION OF CONSTITUTION

SYNOPSIS

The lecture deals with the following topics :

1. Amendment and Amendment of a Statute.
2. Nature and Scope of Amendments.
3. Distinction between Repeal and Amendment.
4. Constitution : Meaning.
5. Constitutional Amendment.
6. Indian Constitution and Amendment.
7. Amendment of Statutes.
8. Effects of Amendments of Statutes.
9. Constitutional Law and Statute Law.
10. Interpretation of Constitution and
11. Progressive Interpretation of Constitution

    (1) The principle or Doctrine of Implied Repeal.

    (2) The Doctrine or Principle of Pith and Substance.

    (3) The Principle or Doctrine of Colourable Legislation.

    (4) The Principle or Doctrine of Territorial Nexes.

    (5) The Principle or Doctrine of Severability or Severability.

    (6) The Doctrine of Eclipse and

    (7) The Doctrine or the Principle of Prospective Overruling

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1. Amendment and Amendment of a statute :--The word 'Amendment literally means "to change" or "to alter" or "to correct for change and improvement". The term Amendment is legal sense. "to bring about a change" by inserting/adding or substituting or deleting/omitting certain words/provision/clauses in a statute so as to improve/revise it to meet/fulfil the object (serve the purpose) of the statute. Amendment is the modification of materials by the addition of supplemental information; the deletion of unnecessary, undesirable, or outdated information; or the correction of errors existing in the text. A temporary statute is made for a short period and it becomes dead on expiry of its period. Where as a permanent/perpectual statute continues to be in force for decades and centuries. Mean while, so many changes and developments take place in the society. The legislature, in order to get the decoded/centuries old statutes and constitution updated, passes Amendment Acts to bring about – appropriate changes in the statutes and constitution so as to meet the changing conditions, social, economic, political and cultural. For instance, Indian Constitution, which was passed in 1950 has been amended 100 times by the Constitution (Amendment) Acts. Similarly, the Companies Act, 1956 was amended for 25 times and has been repealed and replaced by the new Companies Act, 2013. Therefore, if a statute is changed by an amendment/Amendment Act, it is called "Amendment of a statute".

2. Nature and Scope of Amendment :--According to Crawford, "an amending statute is one which makes an addition to or operates to changes the original law so as to effect an improvement therein or more effectively carry out the purpose for which the original law was passed."

Amendment of statute is an alteration or change of something established as law. In *United States vs. La Franea,* [(1931 282 US 568] Sutherland says: "Any change of the scope or effect of an existing statutes, whether by addition, omission, or substitution of provision ,which does not wholly terminate its existence, whether by an Act purporting to amend, repeal, revise or supplement ,or by an Act independent and original in from, is treated as amendatory. And it is effect, not the name given to an Act that determine its character. If a subsequent statute does, in fact, modify and change the proceeding to be had under a former Act, the latter Act is an

amendment of the earlier Act and must be so regarded and treated, although it is not so called in the Act itself."

An amendment is a legislative act intended to change an existing or earlier law either to correct the past deficiencies or to meet the present needs of the public or to secure the future interest of the society or state. Amendment may take the form of, or include, a repeal too. For example when a section of an Act is deleted, it can be said that the section is repealed, but the Act is said to be amended. The purpose of an amendment is to make such addition to, or change in the original Act as in the judgment of the legislature it will better carryout the purpose for which it was enacted (Corpus huris secudem, volume 82 Section 23, p. 411). Though there is no rule to prevent an amendment being made that alters the whole basis of an Act, the jurisprudential prudence counsels that such legislative judgment partake of the spirit of Henry VIII clause.

In *Smt. Dhiraj Bala Karia vs. Jethia Estate Pvt Ltd.,* (AIR 1983 Cal. 166) it was observed that while it is true that the intention of the legislature is to be gathered primarily from the words used in interpreting a statute, the court may consider the following points-

(i) What was the law before making of the Act,

(ii) What was the mischief or defect for which the common law did not provide remedy;

(iii) What remedy the parliament has resolved and appointed to cure the diseases; and

(iv) The true reason of the remedy.

Further, if there is a repugnancy between the two pieces of legislation dealing with the same subject matter, to such an extent that both cannot stand together and operate simultaneously, the latter will have the effect of impliedly repealing the former.

3. Distinction between Repeal and Amendment :-- The term 'Repeal' denotes "to delete or to omit or to revoke or to cancel". Where as the term 'Amendment' denotes to bring about a change by insertion/addition or substitution or omission of a word/provision/section/sub-section etc., in a statute. In other words, amendment is wider concept as it

included repeal and the term repeal does not include amendment.

The legislature, while enacting an Amendment Act provides for deletion/omission of a provision in the existing Act or substitution of a new provision in the place of old provision (by deleting/replacing the old provision).

Particularly speaking, there is no distinction (difference) between repeal and amendment. But the Punjab and Haryana High Court in—*P.A. Deo Raj vs. Union of India,* (AIR 1974 P&H 65@ 71 (FB): held that, sometimes distinction is made between repeal and amendment.

Amendment is ,in fact ,a wider terms and it indicates abrogation or deletion of a provision in an existing statute. If the amendment of the existing law is small, the Act professes to amend; if it is extensive, it repeals the law and re-enacts it. Sutherland, in his 'Statutory Construction (3rd Edn. Vol. I, p. 477) makes the following Statement of Law:

> "The distinction between repeal and amendment a these terms are used by courts is arbitrary. Naturally the use of these terms by the Courts is based largely on how the legislature has developed and applied these terms in labelling their enactment .When a section is being added to an Act or a provision added to section, the legislatures commonly entitled the Act as an amendment....When a provision is withdrawn from section, the legislatures call the Act an Amendment particularly when a provision is added to replace the one withdrawn. However when an entire Act or section is abrogated and no new section is added to replace it, legislature label the Act accomplishing this result a repeal. Thus as used by the legislature amendment and repeal may differ in kind-addition as opposed to withdrawal or only in degree-abrogation of part of a section as opposed to abrogation of a whole section of an Act. The arbitrary distinction has been followed by the court and they have developed separate rules of construction for each .However they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal-the abrogation of an existing statutory provision - and have therefore applied the term implied repeal and the rules of construction applicable to repeals to such amendments."

4. Constitution : Meaning :--The word Constitution is derived from the French word *'Constitutro'*, (emerged from the Latin word) which means "to establish". It also means "rules regulations and orders". It is a text or document containing the fundamental principles/rules to determine and regulate between the State/Government and the people.

According to Wade and Philips (Constitutional Law, 4th Ed. P-1) a 'Constitution' means "a document having a special legal sanctity, which sets out the frame-work and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs.

There are several definitions on Constitution. A few of them are detailed below:

1. Aristotle :--Aristotle, who described man, a social animal, defined 'Constitution' as "the way of life, which the State has choosen for itself".

2. Dicey :--Prof Dicey, an eminent jurist says that "Constitution is the product of all those rules, which affect the sovereignty of a State".

3. Austin :--Austin says that, "Constitution fixes the structure of Supreme Government".

4. K.C.Wheare :--He felt that a constitution is "that body of rules which establish and regulate or govern the ends for which and the organs through which governmental power exercised."

5. Gettell :--According to Gettell, "The fundamental principles that determine the form of a State are called its constitution".

6. Colley :--Colley, an American jurist defines constitution as "the fundamental law of the State containing the principles upon which government is founded regulating the division of the sovereign powers and directing to what persons each of these powers is to be confined and the manner in which it is to be exercised.

5. Constitution Amendment :--In any country, constitution is the supreme law of the land. The Governmental machinery comprising of the Executive, Legislature and Judiciary functions in accordance with the provisions of the constitution. Further, any law (statute/enactment/legislation)

passed by the parliament (Supreme/central/union legislature) or its subordinate legislature must be in accordance (in consonance) with the provisions of the constitution. Otherwise, it is declared void and unconstitutional. The so called supreme law of the land also is a law/legislation and its provisions are to be changed (altered/amended) from time to time like any other law so as to meet the changing conditions social, economic, political and cultural in the state. The appropriate mechanism to alter the provision of the constitution is called "the amendment of the constitution".

Article 5 of the constitution of United States provides for the amendment of the similarly, Article 365 of the Indian Constitution provides for the Amendment of the constitution.

6. Amendment of Indian Constitution :--Part XX containing Article 368 of the Constitution confers on the Parliament, power to amend the Constitution.

'Amendment of the Constitution' is the process by which certain provisions of the Constitution are changed. However, this amending power is subject to a restriction that the basic structure of the Constitution should not be destroyed. So our Indian Constitution has been amended for 99 times since 1951 to till date vide the Constitution (ninety ninth Amendment) Act, 2014, dated 31-12-2014, which envisages the establishment/constitution of the Judicial Appointments Commission for recruitment of the judges of the High Courts and the Supreme Court of India.

Constitution in any country regulates the affairs between the individuals and State. To meet the changing conditions, economic, social, cultural and political, constitutional provisions need change. Constitution of a country may be flexible or rigid. A Constitution is said to be flexible, if it provides a simple procedure for its amendment. A rigid Constitution on the other hand is one, which requires a special, complex and more technical procedure for its amendment. The Constitution of the U.S., Switzerland etc., are rigid. Indian Constitution is both flexible and rigid.

Classification of Amendment :--In view of the importance of the various constitutional provisions, the amending process/procedure has been classified into three categories as follows:

1. Simple Majority :--'Simple Majority' denotes passing of an ordinary Bill by more than fifty per cent of the members present and voting. Certain provisions viz., Articles 5, 169 and 239-A can be amended by a simple majority. These Articles are excluded from the amending procedure under Article 368.

2. Special Majority :--It requires acceptance of majority members in each House of the Parliament and also two-thirds majority of the members present and voting.

3. Special Majority and Ratification of States :-- Amendment of certain provisions, which are of great importance requires ratification by not less than one-half of the State Legislatures in addition to the special majority as referred to in the proviso to Article 368(2) as in respect of the following –

(a) Articles 54 and 55 – The manner of Election of the President.

(b) Articles 73 and 162 the extent of the Executive Powers of the Union and States.

(c) Chapter IV of Part V – Provisions dealing with the Union Judiciary (Arts.124-147).

(d) Chapter V of Part VI – Provisions dealing with the Courts in States (Arts.214-231).

(e) Article 241 – High Courts for Union territories.

(f) Chapter I of Part XI – Legislative Relations (Arts.245 – 255).

(g) Lists (I, II & III) of Seventh Schedule to the Constitution.

(h) The representation of States in Parliament – Fourth Schedule.

(i) The Procedure of amendment of the Constitution – Article 368.

Procedure for Amendment (Article 368) :--According to Article 368 of the Indian Constitution, a Bill proposing to amend the Constitution is introduced in either House of the Parliament. It must be passed by the majority of both the Houses and also two-third members present and voting. Then,

it (the Bill) is sent to President for his assent. If the Bill requires ratification by one-half of the State Legislatures, it should be sent to the President for his assent after such ratification.

Powers of the Parliament to amend the Constitution :--There has been a great controversy as to the question 'whether Parliament has an absolute/unlimited power to amend the Constitution or not. There are two divergent views on this question, one in affirmative, while the other in negative.

According to the first view, the amending power of the Parliament is absolute and unlimited since the framers of the Constitution did not impose any restrictions on the amending power of the Constitution. According to the second view, Parliament is one of the three organs of the Government and is created under the Constitution. In other words, Constitution is supreme, not the Parliament. Therefore, the amending power of the Parliament is not absolute, but limited.

The Supreme Court sometimes followed he first view and some other times followed the second view until its decision in ***Kesavananda Bharati's Case* (1973).**

Whether the Parliament can amend Fundamental Rights :--There had been a great controversy as to the question, whether Parliament can amend Fundamental Right? This question came for discussion before the Supreme Court in:

Shankari Prasad vs. Union of India (AIR 1951 SC 458) – In this case, the validity of the Constitution (1st Amendment) Act, 1951 was challenged on the ground that it abridges fundamental rights. But, the court rejected this contention and upheld the 1st Amendment following the first view, stated above. Again in:

Sajjan Singh vs. State of Rajasthan (AIR 1965 SC 845) – In this case, the validity of the Constitution (17th Amendment) Act, 1964 was upheld by the Supreme Court, on the ground that the amending power of the Parliament under Article 368 is unlimited, which may extend to amend the fundamental rights.

While deciding the above two cases, the Supreme Court viewed that the Constitutional amendment is not a law under Art.13 of the Constitution.

However, the Supreme Court followed the second view and held that the Parliament has no power to amend the Constitution in:

Golaknath vs. State of Punjab (AIR 1971 SC 1643) – In this case, the court struck down the Constitutional validity of the 17th Amendment.

The Constitution (24th Amendment) Act, 1971 :--In order to overcome/nullify the Supreme Court's decision in ***Golaknath's Case*** several amendments viz., 24th, 25th, 27th etc. were made. The 24th Amendment Act, 1971 substituted the heading **"Power of the Parliament to amend the Constitution and Procedure therefor"** to Art.368 in the place of "procedure for amendment of the Constitution." This new marginal heading confers absolute power on the Parliament to amend any part of the Constitution.

The Theory of Basic Structure or the Decorative of Basic Structure:

The validity of the 24th Amendment was challenged in – *Kesavananda Bharati vs. State of Kerala,* (AIR 1973 SC 1461). This case is popularly known as 'Fundamental Rights Case.' The Supreme Court upheld the validity of the 24th Amendment and held that Parliament can amend any part of the Constitution including the preamble subject to the condition that the basic features or basic structure of the Constitution should not be destroyed by such amendment.

The Supreme Court by evolving the 'Basic Structure Theory' removed the conflict between the above two theories, *i.e.,* Parliament's power to amend is unlimited or limited. Now the question arises is: "What is basic structure?"

The majority of seven Judges of the Supreme Court in ***Kesavananda Bharati's Case*** did not define 'basic structure,' but recognised certain items as the features of Basic Structure as follows:

1. Republican and Democratic form of Government.
2. Secular character of the Constitution.
3. Supremacy of the Constitution.
4. Separation of powers between the legislature, the executive and the judiciary.

5. Federal character of the Constitution.
6. Sovereignty of the Country.
7. The dignity of the individual.
8. Freedom and basic rights in Part III.
9. Welfare or economically just society as per the Principles under Part IV Egalitarian Society.
10. Justice, Social, Economic and Political.
11. Liberty of thought, expression, belief, faith and worship.
12. Equality of status and opportunity.
13. Parliament with Lok Sabha and Rajya Sabha.

The Supreme Court in post *Kesavananda cases* recognised some more items as basic features of the Constitution.

Indira Nehru Gandhi vs. Rajnarain, (AIR 1975 SC 2299) – In this case, two more items viz., free, just, fair elections and Rule of Law were held to be basic features of the Constitution. Accordingly the Constitution 39th Amendment was held unconstitutional.

*Minerva Mills vs. Union of India, (*AIR 1980 SC 1789) – In this case, harmonious construction between Part III (Fundamental Rights) and Part IV (Directive Principles) was held to be basic structure and hence, the 42nd Amendment was held unconstitutional.

Further, the Rule of Law in *Samba Murthy vs. State of A.P.,* (AIR 1987 SC 663), Independence of Judiciary in *Kumar Padma Prasad vs. Union of India,* (AIR 1992 SC 1213), Parliamentary Democracy in *Kitho Hallohan vs. Zachillhu,* (AIR 1993 SC 412), Secularism in *Valasamma Veocluin University* (AIR 1996 SC 1101), Judicial Review in *Chandra Kumar vs. Union of India,* (AIR 1997 SC 1125) and

In *State of Bihar vs. Bal Mukund Sah and others,* (AIR 2000 SC 1296 @ 1371) - the Supreme Court observed that the concepts of 'Separation of Powers between the legislature, executive and Judiciary' as well as 'the fundamental concept of independent judiciary have been now elevated to the level of basic structure of the constitution and are the very heart of constitution scheme.'

It is clear from the above that, the amending power of the Parliament under Article 368 is not absolute and unlimited since it is subject to basic structure theory. But the problem is, the concept of basic structure has not been defined. Therefore, it is high-time for the Supreme Court to define/ specify the basic structure so as to avoid future conflicts.

7. Amendment of statutes :--A temporary, which is enacted for a specific short period expires/extinct or gets replaced on expiry of the specified period. Where as permanent or perpectual statutes remain in force for decades and centuries together and the provisions embodied in the statues become outdated and do not suit the prevailing conditions, social, economic and political and hence the statutes need to be changed. So, the machinery adopted/employed to amend the statute by inserting new provision, substituting/replacing the provision, repealing/omitting the provision by passing an enactment called Repealing Act or Amendment Act is called "the Amendment of statutes".

Need or Necessity or Reasons for Amendment of statutes:

Statutes need to be amended so as to fulfil the intention of the legislature and to achieve the object of the legislature. So, amendment of statutes is necessary/essential for the following reasons—

(i) To settle Conflicting Old Decisions :--One of the sources of law before a judge to decide a case is, legislation (law/Statute). If the legislation is too old and is not suitable to the present prevailing circumstances, the judge can exercise his discretionary power to decide the case, irrespective of the provisions in the statute. Hence, the need to be amended.

(ii) To Repeal Obsolete Enactments :--If a statute is too old and become obsolete and ceased to be in force, such statues can no more remains in force, unless they are amended.

(iii) To facilitate the courts to interpret effectively :--When a statue is passed, it goes into the hands of the judiciary to interpret the some to deliver pure and impartial justice. There are certain cases in which the provisions of a statues may be challenged for the reason, the said provisions

in question are not clear and meaningful for effective interpretation. So, such provisions need to be amended.

(iv) Socio Economic Changes :--Statutes, which were enacted long back, were designed keeping in view, the socio economic conditions prevailing at that time. As time passed, such statutes need to be amended so as to suit with the changing conditions, social, economic and political.

8. Effects or consequences of Amendment to statutes :--

The effects of amendment to statute are stated below—

(i) Effects on Parent Act :--Constitution is the supreme law of the land. Any law (Act/statute/Enactment) passed by the Parliament (Supreme Legislation) in accordance with the provisions of the constitution, is called Parent Act. Similarly, any law (Act/statute) passed by the state (Provincial) legislature in accordance (in consonance) with the constitution and parent Act under delegated authority/under the power of delegated legislation is called subordinate legislation. Where a parent is found to be inconsistent with the provisions of the constitution, it is declared to be void and unconstitutional. The amendment of the parent statutes so as to remove the inconsistency qualities the parent Act as an independent statute in aid of itself. In simple words, a parent statue, which is declared void and unconstitutional, can be made valid and constitutional by amending the parent statute. If an unconstitutional Act is amended, the question for consideration is the ascertainment of the intention of the legislature when the amending the Act was passed. If the intention in amending an unconstitutional Act is to make a complete re-enactment of the law which was found to be unconstitutional and invalid, the amending Act will be valid. A statute which is entirely unconstitutional does not render it impossible of amendment, so that an amendment of such a statute is valid .Where the statute purporting to make the amendment is independent and is a complete expression of the legislative will.

(ii) Effects on Judicial Decisions :--Provision for appeal to higher courts restarts in delay in disposal of cases meanwhile, amendment to statute, on the basis of which the case has been decided will have a substantial impact. A change

in law can affect the decision of a court only to the extent that the decision become contrary to law, but where the change in law does not touch the question already decided by the competent Court, the judicial decision is not affected by such amendment.

(iii) Effects of Invalidating of Amendment on Original Act :--The rule that the invalidity of an amendment does not affect the original Act applies whether the amendment stands by itself as an independent enactment or is incorporated in the setting of the original Act by a provision, that the Act 'shall read as follows'. When an amendatory exception to a statute proves unconstitutional, the original statute stand wholly unaffected by it.

(iv) Effect on Repealed :--Amendment of a section or provision of a Repealed Act serves no purpose and hence it is void/invalid.

9. Constitutional Law and Law :--Constitutional Law the supreme law of the land. It is a constituent Act forming the fundamental law of the law. Where as a law is a mere legislature enactment and must be in accordance (in consonance) with the provisions of the constitutional law.

Constitutional Law is constituent Act and no court can question the validity of the constitutional provision. However, any Amendment Act, which brings about a change in the provisions of the constitution, can be challenged before the courts *i.e.* High courts and supreme court (under article 226 and 32 of the constitution respectively). A statue law, whether passed/enacted by the Parliament (Supreme Legislature) or State legislature or its subordinate bodies can be challenged before the courts.

Constitution being a organic statue is permanent and grows by itself. Where as a statue law emerges from the provisions of the constitution. In other words, constitutional law in supreme law, while the statue law is subordinate law.

In *ADM ,Jabalpur vs. Shivakant Shukla,* [AIR 1976 SC 1207], it has been observed that "The Constitution is the touchstone by which the validity of all action whether executive, legislative or judged. Constitution provides the test for the validity of all other laws. It seeks to determine the spheres of executive and legislative and judicial power with

meticulous care and precision .That is why the court (the Supreme Court) has on several occasions, spoken of the supremacy of the Constitution.

10. INTERPRETATION OF CONSTITUTION

1. Application of the Rules of Interpretation of statues also applicable to the constitution :--A written constitution is also a statute and hence, whatever rules of interpretation are applicable to any are also applicable to the constitution. In other words, a written constitution is one the statue/legislations. Among all statutes, constitution is the supreme. It is also known as the constituent Act. It is the supreme law of the land in the sense, any law/legislation/ Act/ passed by the supreme legislature (Parliament) or subordinate legislatures (*i.e.* the State legislative or its subordinate bodies/authorities) must be in accordance with the provisions of the constitution. However, some of the provisions of the constitution and the constitution Amendment Acts are being challenged before the High Courts and the Supreme Court. The Supreme Court, while interpreting the provisions of the constitution delivered so many landmark decisions.

The rules of interpretation of statues applicable to constitution are stated below.—

(i) Same Rules irrespective of the Form of Government :--The constitution may be unitary (like (U.K) or Federal (like U.S.A) or quasi, federal (like India). If the constitution is federal, the Government also is federal. Similarly, unitary and quasi federal. Whatever rules of interpretation are applicable for interpretation of any statute, the rules are applicable to the constitution, irrespective of the Government, whether unitary, or federal or quasi federal. The Government thought the legislative is empowered to make laws (s/Acts/ legislations) and it is immaterial for determining the intention of the legislature.

(ii) Ascertainment of Intention :--The fundamental principle of interpretation is to find out the intention of the legislature behind

enactment of a statute. Similarly, the courts, while interpreting the provisions of the constitution should find out the intention of the legislature and should interpret accordingly.

(iii) **Harmonious construction** :--The principle of harmonious construction should be applied in respect of the interpretation of constitution also. According to the principle of Harmonious construction, harmony or balance has to be maintained in case of two conflicting provisions or sections in the same statute do not conflict/ inconsistent/repugnant with each other. In the event of contingency/inconsistency. It is the duty of the Judges to maintain harmony/ balance between the two; the principle is to be applied.

(iv) **Constitution to be examined with reference to its own Language** :--The courts, while interpreting the provisions of the constitution should critically examine the language used for words in the constitution and also the clear and plain meaning of the words to arrive at the legislative intent in using such words from four errors of the constitution.

(v) **Noscitur a sociis** :--The best made of ascertaining the meaning affixed to any words or sentence by a deliberative body is by comparing it with the word and sentence with which it stand convicted. The obscurity of any particular word may be enlarged or restricted by reference to the object of the whole clause in which it is used.

(vi) **Analogous provision of other Constitutions** :--Indian Constitution being a written one based on the Constitutions of other countries ,the contention is that the courts have to take into consideration of decisions of foreign Court. In *M.C. Mehta vs. Union of India,* [(1987) 1 SCC 395], it has been held that the Supreme Court is not bound by decision of foreign Courts.

In *Babu Lal Parate vs. State of Bombay,* [AIR 1960 SC 51], it was held: "We bring to our task such considerations as are germane to the interpretation of an organic instrument lime the Constitution; but it will be improper to import into the question of construction doctrines of democratic theory and practice obtaining in other countries ,unrelated to the tenor, scheme and word of the provisions which we have to construe .

(vii) Where wording of other Constitution exactly same :--When the wording of the corresponding articles is similar that of a Constitution of foreign country and such being the same, decisions of the foreign country' Supreme Court are useful in deciding the issues challenged.

(viii) Constitution to be considered as a whole :- One of the principles of interpretation is, a statute is to be read/considered as whole. Similarly, all provisions of the considered one to be read/considered as a whole. Similarly, all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument.

(ix) Constitution to be read in the light of circumstances in which made :--The courts, while interpreting the constitution shall take into consideration, the circumstances under which the constitution was made/enacted. Constitution like a statutes, is to be expounded properly in the light of conditions prevailing at the time of its adoption.

(x) Substance :--In construing the Constitution, it is the substance and the practical result of the act of the state that should be considered rather than its purely legal aspect

(xi) Maximi '*Expressio Unimus Est Exclusio Alterius*' Express mention of one thing

implies the expression of another applies :- The expression of one thing in a Constitution may necessarily involve the exclusion of other things not expressed. An exception of any particular case presupposes that all those which are not included in such exception are embraced within the terms of a general grant or prohibition. The rule is likewise well-established that where no exception is made in terms none will be made by mere implication or construction.

(xii) **Not to be construed with reference to motives or public policy or political wisdom** :--It is well settled and the view is found on established principle that Courts have not to go into questions of the policy of the legislature they cannot question the motive for which an Act has been enacted. The Court is not entitled to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful, nor can inquiry into public policy, or investigation into question of political wisdom be undertaken by the Courts.

(xiii) **Not to be construed with reference to something which would commend itself to Court's mind** :--In construing a provision of the Constitution, we cannot look beyond the letter of the Constitution to adopt something which would commend itself to our minds as being a principle abstract justice, that is, principles of international or inter-State ethics, and, if possible, to read the Constitution in conformity with that principle.

2. **Special Rules of Constitution** :--Constitution is a constituent Act and supreme law of the land. Hence, special rules of construction are to be applied, while interpreting its provisions. The courts, while interpreting the provisions of the constitution, must be very careful that the basic structure/ feature of the constitution should not be curtailed/affected.

3. **Liberal construction** :--The Constitution may be interpreted in a broad and liberal manner giving effect to all

its parts and the presumption should be that no conflict or repugnancy was intended by its frames. It cannot be construed in a narrow and pedantic sense and the Court should be guided with a broad and liberal spirit.

Every word or phrase in the Constitution of India must be interpreted in a manner which would advance the socio-economic objective of the Constitution. *People's Union for Democratic Rights vs. U.O.I.,* (1983) 2 SCJ 1. All words and expressions must be given effect to and no word or expression should be rendered nugatory. *Bipat Beni vs. P.D. Sawarkar,* AIR 1962 Bom. 167. Liberal and beneficial construction of the nature and scope of the constitution must be adopted. *India Cement Ltd. vs. State of Tamil Nadu,* 1990 (3) SCC 12.

11. PROGRESSIVE INTERPRETATION OF CONSTITUTION

The courts, while interpreting the provisions of the constitution, come across certain principles of great significance as detailed below—

1. The Principle or the Doctrine of Implied Repeal :--The concept of the Principle/Doctrine of Implied Repeal is borrowed from the English Constitutional Theory. According to this theory, where an Act passed by the Parliament, conflicts with an earlier Act or any part/provisions therefore, the later Act passed by the Parliament supecedes/takes precedence and the conflicting earlier Act as a whole, conflicting part/provisions of the earlier Act would no longer in force and stands repealed. The doctrine is enshrined in a Latin maxim "Leges Posteriors Prioress Contraries abrogate".

In British India, under Section 107(2) of the Government of India Act, 1935 a law enacted by the Central Legislature and within its competence would override provincial legislature covering the same field, the Act did not empower the Central Legislature to enact a statute repealing directly any provincial statute to enact a statute repealing directly any provincial statute to enact a statute repealing directly any provincial statute to enact a statute repealing directly any provincial statute.

2. The Doctrine or Principle of Pith and Substances :--The Union and States are vested with the legislative power in specified subjects. However, the Centre or State may encroach upon the other's subject, while passing a legislation.

In such situation, the Court, in order to determine the competence, applies the 'Doctrine of Pith and Substance.'

The word 'Pith' means "true nature" or "essence" and the word 'substance' means "the essential nature underlying a phenomenon". Thus, the expression "pith and substance" collectively relates to find out the true nature of a particular statute. The purpose of this doctrine is to decide, whether a State, while making a statute upon a subject under the Union List, has acted within its rights/limits. In other words, the doctrine aims to decide the legislative competence of the legislature (Central and State), which passed the law in question. In order to ascertain the true character of the legislation, one must have regard to the enactment as a whole, to its object and to the scope and effect of its provision.

The doctrine of Pith and Substance, for the first time, was applied by the Privy Council in:

Prafulla Kumar Mukherjee vs. Bank of Khulma, (AIR 1947 PC 60) – In this case, the validity of the Bengal Money Lenders' Act, 1946 passed by the Bengal Legislature, was challenged on the ground that it related to 'Promissory Notes' which was a central subject. The Privy Council held that the Act was in Pith and Substance a law in respect of money lending, a State subject and was valid though it trenched upon the 'Promissory Note', a Central subject.

In *B. Viswanathiah vs. State of Karnataka* (1991) 3 SCC 358) – it has been observed that no question of conflict between two lists will arise if the impugned legislation by the application of the doctrine of 'pith and substance' appears to fall exclusively under one list, and the encroachment upon another list is only incidental.

In *Welfare Association, Maharashtra vs. Ranjit P. Gohil* (AIR 2003 SC 1266) – it has been observed that in every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act to find out if the matter comes substantially within an item in the list. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective.

State of Bombay vs. F.N. Balsara, (AIR 1951 SC 318) – In this case, the Bombay Prohibition Act, which prohibited sale and possession of liquors in the State, was challenged on the ground that it incidentally encroached upon import and export of liquors across custom frontier – a Central subject. It was contended that the prohibition, purchase, use, possession and sale of liquor will affect its import. The Court held the Act valid because the pith and substance of the Act fell under the State List and not under Union List even though the Act incidentally encroached upon the Union Powers of Legislation.

In *State of West Bengal vs. Kesoram Industries Ltd.* (2004 AIR SCW 5998) – The Court has held that Courts have to ignore the name given to the acts by the legislature and must also disregard the incidental and superficial encroachments of the act and has to see where the impact of the legislation falls. It must then decide the constitutionality of the Act.

In *Ishwari Khetal Sugar Mills vs. State of U.P.,* (AIR 1980 SC 1955) – the validity of the U.P Sugar Undertakings (Acquisition) Act, 1971 was challenged on the ground that the State Legislature had no competence to enact the impugned law on the ground that it fell under Parliament's legislative power under Entry 52 of List I. It has been held that the U.P. Sugar Undertaking (Acquisition) Act, 1971 is valid on the ground that the pith and substance of the Act fell under Entry 42 of the List III (Concurrent List) and therefore it was *intra vires* and valid.

In *State of Kerala vs. M.T Devassia,* (AIR 1977 SC 331) – it has been observed that a statute, which is in pith and substance within the competence of the State Legislature, will be valid, even though it incidentally encroaches on the subjects reserved for Parliament. Such encroachments are permissible so long there is no conflict between the law enacted by the Parliament and that enacted by the State Legislature.

Repugnancy between a Central Law and a State Law (Art.254) : Article 254 of the constitution lays down the provisions in the event of conflict/inconsistency between laws made by the legislatures of the States. It runs as follows –

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any

provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject o the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Article 254 says that if any provision of law made by the Legislature of the State is repugnant to any provision of a law made by Parliament which is competent to enact or to any provision of the existing law with respect to one of the matters enumerated in the Concurrent List, then the law made by Parliament, whether passed before or after the law made by the Legislature of such state or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void.

Article 254(1) only applies where there is inconsistency between a Central Law and a State Law relating to a subject mentioned in the Concurrent List. But the question is, how the repugnancy is to be determined? In *M. Karunanidhi vs. Union of India,* (AIR 1979 SC 898) - Fazal Ali, J. reviewed all its earlier decisions and summarised the test of repugnancy.

3. The Principle or Doctrine of Colourable Legislation :--Indian Constitution provides for the distribution of legislative powers between the Union Centre and States. The State Legislatures are empowered under delegated legislation, to pass laws subject to the provisions of the constitution. In case, any law passed by the state legislature, as a whole in part is found contrary or inconsistent with any

provision/provisions of the Constitution is declared unconstitutional and void.

The doctrine of "Colorable Legislation" is based on the maxim/principle 'What cannot be done directly cannot be done indirectly'. The court evolved this doctrine to invalidate the indirect legislations, which are *ultra vires* (ultra means beyond, vires means power. Ultra vires means beyond the power conferred or exercising the power beyond limits) the scheme of the distribution of the legislative powers between the Centre and States.

Colourable legislation would emerge when the legislature has no power to legislate on an item either because it is not included in the list assigned to it under the respective entries in the Seventh Schedule of the Constitution or on account of limitation imposed either under Part III of the Constitution relating to the Fundamental Rights or any other power under the Constitution. As the legislature enacts a statute on an assumption of such power, but when on examination it is found that it has travelled beyond its power or competence or in transgression of the limitation imposed by the Constitution itself, such an enactment is called a colourable legislation. It has reference to the legislative competence and not to the power as such. If the legislature enacts law in the pretext of the exercise of its legislative power though it did not possess such power, the legislation to that extent becomes void as the legislature makes its Act only in pretence of and in purported colourable exercise of its power. It does not involve any question of *'bona fide'* or *'mala fide'* on the part of the Constitution.' A thing is colourable when it seems to be one thing in the appearance but another thing underneath.

K.C.G. Narayan Dev vs. State of Orissa, (AIR 1953 SC 375) – in this case, the doctrine of 'Colourable Legislation' has been coined for the first time by Justice B.K. Mukherjee of the Supreme Court. In this case it has been observed, 'If the Constitution distributes the legislative power amongst different legislative bodies, which have to act within their respective spheres marked out by specific legislative Entries, or if there are limitations on the legislative authority in the shape of fundamental rights, question arises as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting

it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert or indirect, or and it is to this latter class of cases that the expression, colourable legislation has been applied in judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise..... In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon the form in which the law is clothed cannot save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing indirect methods.' In this case, the validity of Orissa Agricultural Tax (Amendment) Act, 1950 was in question. The argument was that it was not a *bona fide* taxation law but a colourable legislation whose main motive was to artificially lower the income of the intermediaries so that the State has to pay less compensation to them under Orissa Estates Abolition Act, 1952. The Supreme Court held that it was not colourable legislation because the State was well within its power to set the taxes, no matter how unjust it was. The State is also empowered to adopt any method of compensation. The motive of the legislature in enacting a law is totally irrelevant.

Thus, the doctrine is based on the underlying principle/ maxim that "you cannot do indirectly, what you cannot do directly." In such cases, the court will look into the matter as to the true nature and object of the legislature.

In *K.T. Moopil Nair vs. State of Kerala,* (AIR 1961 SC 252) – the State imposed a tax under Travencore Cochin Land Tax Act, 1955, which was so high that it was many times the annual income that the person was earning from the land. The Supreme Court held the act as violative of Articles 14 and 19(1)(f) and to be invalid on the ground that the Act apparently purported to be a Taxing Act but in reality it was not a Taxing Act but was confiscatory in character.

In *State of Bihar vs. Kameswar Singh,* AIR 1952 SC 252 – In this case, the Bihar Land Reforms Act, 1950 was held void on the ground of colourable Legislation.

In *Balaji vs. State of Mysore,* (AIR 1963 SC 649) – the Supreme Court held that the order reserving 68% of the seats for students belonging to backward classes was violative of Article 14 in disguise of making a provision under Article 15(4).

4. The Principle or Doctrine of Territorial Nexes :--A state legislature cannot enlarge its jurisdiction, unless its boundaries are widened/expanded by an Act of the Parliament. Parliament has, on the other hand, the power to legislate for 'the whole or any part of the territory of India' which includes not only the States but also the Union territories or any other area, for the time being, included in the territory of India. Parliament also possesses the power of 'extra-territorial legislation (Art. 245 (2), which no State Legislature possesses. This means that laws made by Parliament will govern not only persons and property within the territory of India but also Indian subjects resident and their property situated anywhere in the world.

To determine the question whether a particular legislation is within the territorial limits or not, is decided by applying the 'Theory/Doctrine of Territorial Nexus.' A State law having extra-territorial operation is said to be valid provided there is a sufficient nexus between the object and the State.

There is no exception to this general rule. A State law having extra-territorial operation will be valid if it can be sustained on the basis of the doctrine of the territorial nexus. The doctrine of territorial nexus implies that the object to which the law applies need not be located within the boundaries of the States. It is enough if it has sufficient territorial connection with the State. In other words, although the object to which the law applies may be physically be located within the territorial limits of a State, yet the State law will be valid if there exists a real connection or nexus between the State and object. This doctrine has generally been invoked in tax cases.

In *Wallace Brothers and Co. Ltd. vs. Income-tax Commissioner, Bombay,* AIR 1948 PC 118, the company which was incorporated in England was a partner in a firm in India. The company made an overall profit and the Indian Income

Tax authorities levied Income Tax on the entire income of the company. It was held that the impositions of tax was valid as there was sufficient territorial nexus between India and the company.

In *Tata Iron and steel Co. vs. State of Bihar,* AIR 1958 SC 452, the Bihar Sales Tax Act, 1947, Which provides for levy of sales tax on the sales of their goods in outside was challenged on the ground of extra-territorial operation. The Court upheld the Act on the ground that there was sufficient nexus between the object to which it applies and the State of Bihar which was to levy the tax.

In *State of Bombay vs. Narayandas Mangilal,* AIR 1985 Bom. 68, it has been observed that whether or not sufficient territorial nexus exists, is a question of fact and determined by the Court in each case having regard to the facts and circumstance of the case and the liability sought to be imposed must pertinent to that connection.

5. The Principle or Doctrine of Severability or Seperability :--The Doctrine of Severability emerges from the express language of Article 13, which provides that 'a law is void only to the extent of the inconsistency or contravention' with the relevant fundamental right. The expression 'Severability or Severability' literally means "Separation". For the purpose of Article 13 of the Indian Constitution, it means "to separate the valid portion of the law from the invalid portion, where an Act or legislation contains both the void and valid provisions." The main object of the doctrine is to retain the Act or legislation in force by discarding/deleting the void provisions.

Article 13 (1) of the Constitution declares that "all laws in force kin the territory of India, immediately before the commencement of this constitution, which are inconsistent with the fundamental rights under Part-III, shall be void to the extent of such inconsistency."

Where a part of the Statute is found inconsistent with Part-III of the Constitution and is declared void/ unconstitutional, then the question arises is, whether the whole of the Statute is to be declared void or that part of the Statute inconsistent with Part-III alone shall be declared void?

The Supreme Court in many cases answered in favour of the latter part of the above question *i.e.*, that part of the statute inconsistent with Part-III alone shall be declared void.

A.K. Gopalan vs. State of Madras, AIR 1950 SC 27-1950 SCJ 174 – In this case, the Supreme Court struck down Sec. 14 of the Preventive Detention Act, 1950 on the ground that it is violative of the fundamental right guaranteed under Article 22 of the Constitution. The Court severed (separated) that section from the impugned Act (Preventive Detention Act) and held the remaining part of the impugned Act could remain unaffected (*i.e.*, the Act minus Sec. 14 is declared valid).

The Supreme Court in *R.M.D.C vs. Union of India,* (AIR 1957 SC 628) – has detail laid down the criteria relating to the doctrine observing that–

> "when the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on that become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separated from what is invalid and that it a question which has to be decided by the Court on a consideration of the provisions of the Act."

In *State of Bombay vs. F.N. Balsara,* AIR 1951 SC 318 – The Supreme Court held that though 8 sections of the Bombay Prohibition Act, 1949 were *ultra vires* for infringement of fundamental rights, the rest of the Act would continue.

In *Minerva Mills Ltd. vs. Unon of India,* AIR 1980 SC 1789 – the Supreme Court struck down Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976 as *ultra vires i.e.*, beyond the amending power of the Parliament. These two sections were declared void and severed from the Act so as to make the remaining part of the Act constitutionally valid.

In *D.S.Nakara vs. Union of India,* (AIR 1983 SC 130) – it was held that where the Act remained valid while the invalid portion of it was declared invalid because it was severable from the rest of the Act.

6. The Doctrine of Eclipse :--The term 'Eclipse' literally means "to hide wholly or in part" or "throwing into the shade". The doctrine of 'Eclipse' envisages that a pre-

constitutional law inconsistent with a fundamental right should not be wiped out altogether from the statute book after the commencement of the constitution as it constituted to exist in respect of rights and liabilities, which had accrued before the date of the Constitution (*Keshavan Madhava Menon vs. State of Maharashtra,* AIR 1951 SC 128). The doctrine of eclipse aims to validate a statute, which remains dormant as it is over-shadowed by the rights. It is based on the principle that a law, which violates fundamental rights is not nullity or *void ab initio* but becomes only unenforceable. Such statute/law shall not be wiped out totally from the Statute Book.

According to Article 13 (1) of the Indian Constitution, "All laws in force in the territory of India, immediately before the commencement of the constitution, which are inconsistent with the fundamental rights under Part-III, shall be void to the extent of such inconsistency."

Where a statute is found inconsistent with the provisions of the fundamental rights (under Part-III of the Constitution), such statute may be declared void. However, such statute is not *void ab initia.* It cannot be declared void/dead unless it is abolished by the Parliament and shall be treated as sleepy. The inconsistency of such statute (passed before the constitution) can be removed by as amendment to that effect (after the commencement of constitution) so that the statute becomes valid and enforceable.

Bhikaji Narain Dhakras vs. State of M.P., (AIR 1955 SC 781) – In this case, the Supreme Court held that any existing law inconsistent with fundamental right, which becomes inoperative from the date of constitution is not dead totally. It is only overshadowed by the fundamental right. This interpretation is an illustration of the application of the doctrine of eclipse.

In *Deep Chand vs. State of U.P.,* (AIR 1959 SC 648) – the Supreme Court has held that a post-constitutional law made under Article 13(2) which contravenes a fundamental right is nullity from its inception and a still-born law. It is void *ab initio.* The doctrine of eclipse does not apply to post-constitutional laws and therefore a subsequent constitutional amendment cannot revive it.

It *Mahendra Lal Jain vs. State of U.P.*, (AIR 1963 SC 1019) – the Supreme Court has held that the doctrine of eclipse applies only to pre-constitutional law under Article 13(1) and not to post-constitutional law.

However, in exceptional cases the doctrine of Eclipse may be applied to post-constitution Law. In *State of Gujarat vs. Ambica Mills*, (AIR 1974 SC 1300), it has been held that a law which takes away or abridges the Fundamental Rights which is available only to citizens (and not available to non-citizens) is void only against the citizens and will remain in operation as regards the non-citizens.

Thus a post-constitution law which takes away or abridges the Fundamental Rights is not void or non-existent in all cases and for all purposes. Such a law will be void and ineffective only against the persons whose Fundamental Rights which are available only to citizens it will be void against citizens but will be valid against non-citizens.

In *Dularey Lodh vs. IIIrd Additional District Judge, Kanpur*, (AIR 1984 SC 1260) – the Supreme Court applied the doctrine of eclipse to post-constitution law even against citizens.

7. The Doctrine or Principle of Prospective Overruling :--The doctrine of prospective over-ruling enables the court to over-rule an earlier decision and restrict the operation of the new ruling only to the future cases or future transactions. The doctrine of prospective overruling is well established in the USA in Cass: *Great Northern Railway vs. Sunburst Oil & Ref. Co.* [77 L.ed 360] *and Linkletter vs. Walker,* [(1965) 381 US 618].

The doctrine of 'prospective overruling' was developed by the supreme Court of the USA to shield the past transaction, when a new view is adopted by the Court and the doctrine envisages that a well-established precedent may be overruled from the future date and not retrospectively and the Court retained the power to decide the balance of all relevant considerations to decide whether a decision overruling a previous precedent should be applied prospectively. Retrospective overruling may cause administrative inconvenience in some situation and, by disturbing vested right, may cause hardship to those who may have acted on the basis of the old principle of law. The doctrine of prospective overruling seeks to avoid such harsh result. When the court

declares a law invalid it may not necessarily affects transaction and right accrued prior to such decision but may operate with respect to transactions and right arising after the said decision.

The Indian Constitution does not expressly or by impliedly speak against the doctrine of prospective overruling But, Articles 32, 141 and 142 of the Constitution are enacted in such wide and elastic terms as to enable the Supreme Court to formulate legal doctrines to meets the ends of justice. The only limitation thereon is reason, restraint and injustice. Nor is there any statutory prohibition against the Court refusing to give retrospectively to the declared by it.

However, the doctrine of prospective overruling can be invoked only in matter arising under the constitution and it can be applied only by the Supreme Court as it has constitutional jurisdiction to declare law binding on all India.

The *Supreme Court, in Golak Nath vs. State of Punjab,* [AIR 1967 SC 1643] applied the doctrine of prospective overruling to save all the previous constitutional Amendments prior to the said decision. The Chief Justice Subba Rao referred to the American doctrine of 'Prospective overruling' and said that it is a modern doctrine which is suitable for a fast moving society. He has said that it does not do away with the doctrine of 'Stare-decisis' but confines it to past transactions. It is true only in one sense that the doctrine involves in making of law. What Court really does is to declare the law but refuses to give retrospectively to it. The Court, he said, finds law and does not make law. It finds law but restrict its operation to the future only. It enables the court to bring about a smooth transition by correcting its error without disturbing the impact of those errors on the past transactions. The Chief Justice has said that as this Court for the first time has been called upon to apply this doctrine, they would lay down the following propositions.

(1) The doctrine of Prospective overruling can be invoked only in matters relating to constitution.

(2) It can be applied only by the highest court of the Country.

(3) The scope of retrospective operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretions to be moulded in accordance with the justice of the cause or matter before it.

In *State of H.P vs. Nupur Private Bus Operators Union,* [AIR 1999 SC 3880] the Supreme Court has made it clear that the doctrine of prospective overruling is not available to the High Courts. Hence the doctrine of prospective overruling cannot be utilised by High Courts.

The doctrine of prospective overruling has been applied by the Supreme Court in Subsequent cases namely: *Minerva Mills vs. Union of India,* (AIR 1980 SC 1789]; *Waman Rao vs. Union of India,* (AIR 1981 SC 271], Raymond *Ltd. vs. Madhya Pradesh Electricity Board,* [AIR 2001 SC 238] etc.

LECTURE -XVII

CONFLICT BETWEEN PARENT LEGISLATION AND SUBORDINATE (DELEGATED) LEGISLATION

OR

PARENT AND DELEGATED LEGISLATION

OR

DELEGATED LEGISLATION

1. Introduction : Among the various sources of, legislation is of great significance and paramount importance. Effective interpretation of statutes (legislation/Enactments/ Acts/ir dark itaeies laws) is *sine quo non* for sound administration of Justice to deliver pure and impartial Justice. The law making authority or the authority empowered to make law/legislation is called legislature. The legislature may be broadly categorized under two heads namely,

(i) Supreme Legislature and

(ii) Subordinate Legislature.

Strictly speaking, the Central/Union Legislature, which is the supreme legislature, alone is empowered to male legislations (Acts/Laws). As it is practically impossible for the supreme legislature to make legislations to make legislation all times in all cases, the central/supreme transfer/entrust/ delegate Legislature (Parliament) transfer/entrust/delegate the law making power to its subordinate bodies/authorities namely, the State Legislatures and their subordinate bodies Viz. Railways, Universities, Municipal Authorities (Nagar Palikas/Municipal Corporations and Municipal Councils), rules and regulations made by the Superior courts, laws made by Executives etc,. The transfer of power by the superior body/ authority to the subordinate body/authority is called "Delegation of Authority". Similarly, the transfer of law making authority by the supreme legislature to the subordinate legislatures is called " the Delegated Legislation". Therefore, in India, the Parliament comprising of the Lok Sabha (House of people), Rajya Sabha (Council of states) and the President of India, is called Supreme Legislature". And the State Legislatures (comprising of Legislative Assembly, Legislatures council and the Governor of the State) and the subordinate

bodies are called the "Subordinate Legislatures". It is also known as "Delegated Legislation".

2. Parent Legislation and Subordinate Legislation :

(i) Parent Legislation :--Our Indian constitution comprises of both the federal and Unitary Principles. One of the principles of federalism is "Dual Policy". So, the union at the centre at States at provinces are endowed with sovereign powers. Therefore, the law/legislature is called a "Parent Legislation". Further, an Act/legislation passed by the Parliament or State Legislature, which confers law making power on the subordinate body/authority is called "Parent Act". In other words, An Act, which delegates the law making power to the Executive is called "the parent Act". It is also known as "Enabling Act or Delegating statute".

(ii) Subordinate Legislation :--The word subordinate denotes "imperior or imperior in rank". Subordinate Legislation is one, which is made by a body or an authority other than Central Legislature (Parliament) and State Legislatures. Namely Railways, Universities, rules and regulations made by Superior courts, Laws made by Executives etc. All laws/legislatures made by the supreme legislature/parliament or state legislatures or its subordinate bodies must be in accordance/ consistent with the provisions of the constitution. Similarly, laws/legislations made/passed by the subordinate bodies must be in accordance/in consonance with/consistent with the provisions of the Parent Act and the constitution. Otherwise, it becomes void and unconditional. The purpose of the subordinate legislation is to bring into effect the existing law. It cannot make any provision outside the powers conferred by the Parent Act.

3. Delegated Legislation :

Meaning :—Conditional legislation is also known as Contingent legislation. It comes into force upon the happening of a contingency or upon the fulfilment of a condition by the Executive. It was invented/introduced by the British Parliament to enabling itself to rule its colonies.

In this case, the legislature makes law in full and complete. No legislative power is delegated to the Executive. It is left to the Executive to bring the Act into force on fulfilment

of certain condition or contingency. Such legislation is called 'Conditional or Contingent' Legislation.

Definition :— *Hart defines* – 'Conditional legislation is a statute that provides controls but specifies that they are to go into effect only when a given administrative authority fulfils the existence of conditions defined in the statute.'

Delegated Legislation in England

In England, Parliament is supreme. It has unlimited powers to make any law. It cannot be questioned by the Court on any ground. So there is no limit on the Parliament in the case of delegation of its power to the executive. The Parliament need not provide any standard for the exercise of that power. There is no external authority to compel the Parliament to provide policy or safeguards in the statute delegating legislative power. The remedy against misuse lies in the parliament itself. It can control delegation if it pleases.

Delegated Legislation in U.S.A.

Delegated Legislation in U.S.A. may be explained with reference to:

(a) In theory :—In U.S.A, the law of delegated legislation is based on two doctrines viz. The doctrine of separation of powers and delegatus non-protest delegare. In other words, delegated legislation is not accepted in U.S. Constitution in theory for two reasons namely:

(i) The Doctrine of separation of powers is adopted in U.S. Constitution and hence, the U.S. Congress cannot delegate legislative power.

(ii) Delegatus non-protest delegare: It means a delegate cannot further delegate. The Congress gets power from people and is a delegate. Being a delegate, it cannot further delegate its power to another.

In spite of this above two doctrines, the U.S Congress (legislature) has power to delegate its law making power subject to fulfillment of certain conditions.

Yakus vs. United States, 321 U.S. 414 (1944) – In this case the delegation by the Congress was held to be valid on the ground that the statute making the delegation prescribed

sufficiently definite standards to guide the delegate. In this case the validity of delegation by the Emergency Price Control Act, 1942 to the Price Administrator was challenged. This Act empowered the Price Administrator to establish 'such maximum price or prices as in his judgment will be generally fair and equitable and will effectuate the purposes' of the Act in case in his opinion the commodity prices rose or threatened to rise to an extent or in a manner inconsistent with the purposes of the Act.

(b) In Practice :—In Practice, it is not possible in America to stick on to the above rule. In view of the expansion of governmental functions, it is not possible for the Congress to enact all statutes with all particulars.

Panama Refining Co. vs. Ryan, (Hot Oil case) (1935) 293 US 388 – Under Section 9 (c) of the National Industrial Recovery Act (NIRA), the President was authorised by the Congress to prohibit transportation of oil in inter-state commerce in excess of the quota fixed by the concerned state. The Supreme Court by majority held that the delegation was invalid. According to the Court the Congress had not declared legislative policy or standard.

Delegated Legislation in India

The Delegated Legislation in India may be studied with reference to:

(a) Pre-Constitution Period; and

(b) Post-Constitution period.

In India, Delegated Legislation is accepted both in Pre-Constitution and Post-Constitution period. During the period of King Henry VIII, the executive under the delegated legislation was empowered to amend the parent act.

The scope and ambit of delegated authority must be so construed, if possible as not to make it bad because of the vice of excessive delegation of legislative power. *Ajay Kumar Banerjee vs. Union of India,* AIR 1984 SC 1130.

With regard to Post-Constitution period, the principle of delegated legislation is well accepted. Indian Parliament conferred on Executive and other Administrative Authorities to formulate laws, rules, regulations, bye laws etc. for the peaceful and successful administration of the Government.

4. Sub – Delegation :

Meaning:— Delegated Legislation means 'Conferring one's power of law making to another, or extension of law making power to the Executive by the Legislature. If the Executive, *i.e.* the Delegate further delegates such power to any subordinate authority or agency, it is called 'Sub-Delegation'. The authority which confers law-making power on delegate is called 'Parent' or 'delegate' and the further delegatees are called 'Children'.

Criticism :—There is a well-known maxim, which criticises sub-delegation. It is 'Delegatus non protest delegare', which means, "a delegate cannot further delegate". This principle applies in case of delegated legislation also unless there is an express or implied provision to that effect. It is also contended that sub-delegation is against the principles of rule of law and Parliamentary Sovereignty.

In *Jackson vs. Butterworth* – Certain circulars issued by the sub-delegate were held to be bad (invalid).

Position in India:— In India also, the principle of sub-delegation is not accepted unless there is an express or implied provision by the statute.

Ganapati vs. State of Azmeer – In this case, the Parent Act conferred on the Chief Commissioner to frame rules for proper system of conservancy and sanitation at fairs. The rules made by the Chief Commissioner were further conferred on the District Magistrate to devise his own system. The Supreme Court held the rules framed by the District Magistrate *Ultra vires.*

5. Conditional or contingent Legislation :

Meaning :—Conditional legislation is also known as Contingent legislation. It comes into force upon the happening of a contingency or upon the fulfillment of a condition by the Executive. It was invented/introduced by the British Parliament to enabling itself to rule its colonies.

In this case, the legislature makes law in full and complete. No legislative power is delegated to the Executive. It is left to the Executive to bring the Act into force on fulfilment of certain condition or contingency. Such legislation is called 'Conditional or Contingent' Legislation.

Definition :—*Hart defines* – 'Conditional legislation is a statute that provides controls but specifies that they are to go into effect only when a given administrative authority fulfils the existence of conditions defined in the statute.'

Cooley defines – 'It is not always essential that a legislative act should be a completed statute which must in any event take effect as law at the time it leaves the hands of the legislative department. A statute may be conditional, and its taking into effect may be made to depend upon some subsequent event'.

Types/Classification of Conditional Legislation :

1. This type of legislation is seen in almost all the statutes, where the date of commencement of the Act is left to the discretion of the Executive.
2. The Executive is given power to extend the life of the Act.
3. Statute confers power on the Executive to apply and adopt the statutes in other states.
4. The exeoutive may be empowered to extend the provisions of the Act to more territories.

5. Classification or Types of Delegated Legislation:

Proper understanding of the subject, delegated legislation has been classified by different authors on different basis stated below:

1. Title Based Classification :—On the basis of nomenclature, the delegated legislation may be classified as follows:

(a) Rule :—It means a rule made in exercise of powers conferred by any enactment and includes regulation made as a rule under any enactment.

(b) Regulation :—It means an instrument by which decisions, orders and acts of the government are made known to the public. In the sphere of delegated legislation, the term relates to the situation where power is given to fix the date for the enforcement of an Act or to grant exemptions from the Act or to fix prices etc.

(c) **Order :**—There is not much difference between rule and order. Only in the name it differs. Depending upon the nature of the power delegated to the executive, it can make two kinds of orders such as General and Particular orders.

(d) **Bye-laws :**—It means rules made by the semi-Government authorities established under the Act or statute, e.g. rules made by local authority, statutory crop., etc. By-laws are, thus, made by the semi-Government authorities established under the Act or statute. They are, thus, made by local authority or statutory corporation, etc.

(e) **Direction :**—Directions are generally framed by the head of the department to regulate the internal functions of the department. It may be mandatory or recommendatory in nature.

(f) **Scheme :**—It is used to refer to a situation where the executive or administrative authority is authorised by the Act or statute to lay down a framework within which the concerned authority is to function.

2. Purpose Based Classification :—Delegated legislation may be classified on the basis of the purpose for which the delegation is made, as follows:

(a) **Power to bring the Act into operation :**—All Acts contain a 'commencement clause'. In majority of the Acts the commencement clause empowers the respective governments to appoint a day for the commencement of the Act to come into force. In such cases, the commencement of the operation of the Act depends upon the decision of the government, e.g. Section 1(3) of the Industries (Development and Regulation) Act, 1951; Consumer Protection Act, 1986; Section 1(3) of the Protection of Civil Rights Act, 1955, Section 1(3) of the Hire Purchase Act, etc. Such delegation has been held to be valid. It does not amount to excessive delegation.

(b) **Power to extend the scope/life of the Act :—** Sometimes the legislature may pass an Act declaring that it is applicable to limited territories/persons/commodities or it shall apply for a particular period in the first instance. Later, it empowers the executive to extend its jurisdiction or extends its life for a further period. E.g. Sec. 27 of the Minimum Wages Act 1952. The Minimum Wages Act, 1952 which authorizes the Central Government to include any industry to the schedule containing the list of the industries to which the Act is to apply. It has been held valid because the legislative policy is apparent on the face of the Act. Sometimes the legislature which passes the Act declare that the Act will apply only for particular period and empowers the executive to extend its life or duration, e.g. The Bihar Maintenance of Public Order Act, 1948.

(c) **Power to include or exclude persons or objects :—**The legislature may pass an Act applicable to a particular individual, class or persons, institutions, or commodities, but empowers the government to include any other similar type of individuals, class or persons, institutions, or commodities within the purview of the Act. Similarly, the Act may empower the Government to exempt certain persons, class of persons, institutions from its operation or commodities.

(d) **Power to modify the Act or Statute :—** Sometimes the Act or statute making the delegation of legislative power authorises the executive to modify the Act or statute itself. Sometimes it becomes necessary to enable the executive to meet the changing circumstances. Consequently, such delegation is, often held valid, if there is no change in the legislative policy of the Act or statute.

(e) **Power to remove difficulties :—**Some statutes authorise the government to modify the

provisions of the parent Act for the purpose of removing difficulties. E.g. Sec.34 of the Administrative Tribunals Act, 1985 which reads as follows: "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order punished in the official gazette, make such provisions, not inconsistent with the provisions of this Act as appears to be necessary or expedient for removing difficulty."

(f) **Power to adopt laws from other States :**—In this type of delegation the executive is given the power to adopt and apply statutes existing in other states. E.g. Sec. 7 of Part-C States Law Act delegates powers to the central government to extend to any Part-C state, with such restrictions and modifications, as it thinks fit, any enactment, which is in force in any Part-A state.

(g) **Power to prescribe punishments:**— In this type of delegated legislation the law will be made in its full form by the legislature, but the executive will be empowered to prescribe punishment for the breach of the provisions of the Act subject to the maximum punishment laid down in the Act. E.g. Sec.37 of the Electricity Act, 1910. (If the maximum punishment is not prescribed in the Act the delegation can be held invalid on the ground of excessive delegation).

7. Limits and Constitutionality of Delegated Legislation :--There is no express provision empowering the legislature to delegate law-making power to the Executive. However, Article 13(3)(a) confers on the legislature, to delegate law-making power to the Executive. However, Article 13(3)(a) confers on the legislature, implied authority to delegate the law making power. Article 13 (3)(a) defines the term 'law'. According to this Article, "law" includes any rules, orders, byelaws, regulations and notifications etc. This wide definition for law given under Article 13 (3)(a) impliedly covers the area of delegated legislation also.

8. Control over Delegated Legislation : The controls over delegated legislation can be explained with reference to following legislation can be explained with reference to the following headings :

(A) Judicial control

(B) Legislative or Parliamentary control.

(C) Other controls.

In the control mechanism of delegated legislation, judicial control occupies first place. The history of judicial control over Delegated Legislation can be traced back to as early as 1877 in – *Queen vs. Burah* : The Calcutta High Court declared a delegated legislation invalid.

Grounds for Judicial Control/Review :—Judiciary can control/review the delegated legislation on the following grounds:

The expression '*Ultra Vires*' means beyond powers. (Ultra means beyond, Vires means power).

1. Parent Act is *ultra vires* the Constitution :—If the Parent Act violates the provisions of the Constitution, it is void and unconstitutional. The delegation made under such Act also is void. Relevant case on this point is:

Chintaman Rao vs. State of M.P., (AIR 1951 SC 118): The District Collector under delegated authority passed an order prohibiting beedi manufacture. It was held ultra vires, since it violates freedom of trade and profession guaranteed under Article 19(1)(g) of the Constitution.

2. Delegated Legislation Ultra Vires the Constitu-Otion :—Sometimes, the Parent Act holds good, and is within the limits of the Constitution. However, the delegated legislation made under the Parent Act may be ultra vires the Constitution.

In *Air India vs. Nergesh Meerza,* (AIR 1981 SC 1829): The regulation may be Air India providing for termination of service of an airhostess on her first pregnancy, was held violative of Article 14 of the Constitution.

3. Delegated Legislation is *ultra vires* the Parent Act :—The validity of delegated legislation can be questioned on the ground that it is ultra vires the Parent Act.

In *Ram Prasad vs. State of U.P.*, (AIR 1952 All 843): The Uttar Pradesh Panchayat Raj Rule 87 framed under the Parent Act (U.P. Panchayat Raj Act, 1947) was held to be ultra vires the Parent Act.

4. Delegated Legislation *Ultra Vires* any General Law/Rule of Law :—The validity of the Delegated Legislation can be challenged on the ground that it is ultra vires the general law. It takes place, when the delegated legislation makes a law in force unlawful and unlawful act lawful.

In *A.V. Nachane vs. Union of India*, (AIR 1982 SC 1126): In this case the rules framed by the Union Government under delegated authority by L.I.C. with regard to bonus to Class-III and Class-IV employees was held ultra vires since it supercedes the terms of the Bonus Settlement 1974.

5. Unreasonableness :—Generally, a statute cannot be challenged on the ground of unreasonableness. RBut????????, in exceptional cases, it can be challenged on the ground of unreasonableness. (*State of Assam vs. Om Prakash*).

6. Mala fide (Bad faith) :—Mala fide means 'bad faith' or ulterior motive. Delegated Legislation can be challenged on the ground of Mala fide, if it has no relation to the purpose for which the law making power was delegated.

7. Excessive Delegation :—In India, only in few cases, delegation of law making power is struck down by the Courts on the ground of excessive delegation.

8. Sub-Delegation :—As stated above, the principle of sub-delegation is subject to criticism and not accepted, unless there is a provision express or implied to that effect. Hence, the validity of an act under sub-delegation can be questioned *ultra vires*.

2. Legislative or Parliamentary Control over Delegated Legislation :--The Parliament or Legislature, which delegates law making power on the Executive has a duty to see and check whether such delegated authority in making laws is properly exercised.

The Legislative or Parliamentary control over the Delegated Legislation can be effectively exercised by:

1. **Laying on the Table :**—It means placing before the table. It is made to make the legislators know, as to the law making power to be conferred on the Executive. It also gives an opportunity to the members to question or challenge the proposed delegation of authority on the Executive. There are several types of laying.

The select committee on Delegated legislation in its report in 1953 summarised laying procedure under different heads. They are :

1. **Simple laying :** The rules will come into force as soon as they are laid before the House. The object of this type of laying is to inform the House about the rules and regulations. Here there is no effective control at all.
2. **Laying subject to annulment :** Here also the rules will come into force as soon as they are placed before the House. But those rules can be amended or annulled by the House through a resolution. This type of laying is a check on the rule making power of the executive.
3. **Laying subject to affirmative resolution :** The rules will not have any effect unless approved by the House through resolution. This type of laying is the most effective control over delegated legislation.
4. **Laying subject to negative resolution :** If there is any provision for such a type of laying, the draft Rules must be placed before the House. Such rules shall come into force after forty days from the date of laying unless it is disapproved by the House before that period.
5. **Laying of draft rules :** There may be provision requiring laying of draft rules before the House. Laying draft rule with affirmative resolution is considered to be one of the most effective controls. The draft rules shall not have any effect unless approved by the House.

In India only a handful of the Acts have provided laying procedure. But by the Delegated

Legislation Provision (Amendment) Act, 1983, amended nearly fifty statutes and inserted provision for laying before the House.

2. Scrutiny Committees :—Parliament would be of no use, unless the rules are properly studied and scrutinised. In order to strengthen the parliamentary control over Delegated Legislation, scrutiny committees are constituted. In India, two types of such committees are established. They are:

1. **The Lok Sabha Committee on Subordinate Legislation :** It was established in 1953. It consists of fifteen members. The members are appointed by the Speaker for a period of one year. Ministers are prohibited from becoming members. Generally all decisions are taken unanimously and party considerations are not given importance. The Chairman of the committee will generally be a member of the opposition.
2. **The Rajya Sabha Committee on Subordinate Legislation :** It was established in 1964. It also consists of fifteen members. Both the members and Chairman of the Committee are nominated by the Chairman of the Rajya Sabha. In the case of Rajya Sabha Committee, ministers also can become members. The committee will continue in office till a new committee is appointed.

3. Other Controls

In addition to the above, there are other controls and safeguards to regulate delegated legislation.

9. Conflict between Parent Legislation/Act and Subordinate Legislation

The word conflict literally means "inconsistency or repugnancy". Conflict is a situation in which one power tends to disregard another power resulting in clash or conflict of interests between two individuals or two authorities.

A subordinate legislation or delegated legislation is an Act/legislation, passed by virtue of authority conferred by the parent Act/Legislation. Hence, the provision of the subordinate

legislation must be in consonance with the provisions of the parent Act and should not surpass/super cede/ override the parent Act. In case any part of the subordinate legislation is directly or indirectly is in conflict with the parent Act, it can be challenged on the ground that it is *ultra vires* the parent Act. (The expression *ultra vires* (ultra = beyond and vires= power) means "beyond the power". The subordinate legislation should be passed by the subordinate authority within the powers conferred on it by the parent Act. If the subordinate Act is made impugning/violating/infringing the procedure laid down in the parent Act, it is to be declared void *i.e.* Invalid.

The conflict between the Parent Act/legislation and Subordinate Legislation takes palace under the follow circumstances—

(i) When the subordinate legislation is passed ultra vires the power conferred on it by the Parent Act.

(ii) When it super cedes/surpasses the Parent Act.

(iii) When it contradicts the existing law in force.

(iv) When it is violation of the provisions of constitution or general law.

(v) When there is an excessive delegation conferred, the subordinate legislation conflicts with the parent Act.

(vi) When the subordinate legislation did not adhere to the procedure prescribed/laid down by the parent Act.

(vii) If the subordinate legislation offends against any of the mandatory provisions of the constitution or the Parent Act.

(viii) If the subordinate law making authority wrongfully or unlawfully exercises its authority while enacting the subordinate legislation.

CASE LAWS

Ram Prasad V. State of U.P., (AIR 1952 All 843) : In this case, conflict arose between the Parent Act and Subordinate Legislation, section 49 of the U.P Panchayat Raj Act, 1947.

The Parent Act prescribed minimum numbers as quorum to try. But the subordinate legislation provided for the trial by a bench constituted under the U.P Panchayat Raj Act. It was held the subordinate legislation void/invalid on the ground that it was in conflict with the Parent Act.

In *Banwarilal vs. State of Bihar,* AIR 1961 SC 849 Sec-12 of the mines Act, 1952 made it obligatory on the Central Government to consult the Mining Board, constituted under the Act, before making rules there under. The framing of the rules without consulting the Mining Board has been held as invalid by Supreme Court because it was ultra vires the procedure prescribed under the Parent Act.

Similarly, in *Delhi Transport Undertaking vs. B.B.L. Hajery* (1972) 2 SCC 744 the Supreme Court held that the rules framed under Delhi Corporation Act, 1957 were ultra vires the parent Act. In the said Act, S-90(1) of the Delhi Corporation Act, 1957 designates the General Manager to be the competent appointing authority of all persons drawing a salary less than Rs. 350/- p.m. Sec-95 provided that no person shall be dismissed by any authority subordinate to the appointing authority. But the rules framed under the Act gave power the General Manager to delegate all his powers to Assistant General Manager. This rule was struck down by the Supreme Court as it was in conflict with Sec-90 and Sec-95 of the parent Act.

10. Limitations on Delegated Legislation :--Following are the notable limitations on the legislature to delegate the law making power

(i) No Express Provision in the constitution conferring power on the Legislature : There is no express provision empowering the legislature to delegate law-making power to the Executive. However, Article 13(3)(a) confers on the legislature, to delegate law-making power to the Executive. However, Article 13(3)(a) confers on the legislature, implied authority to delegate the law making power. Art.13 (3)(a) defines the term 'law'. According to this Article, "law" includes any rules, orders, byelaws, regulations and notifications etc. This wide definition for law given under Article 13 (3)(a) impliedly covers the area of delegated legislation also.

(ii) Essential and Primary legislative functions cannot be delegated : The legislative functions of the legislature can be classified into the heads namely i) primary functions and ii) secondary/ancillary functions. The legislature cannot delegate the primary functions like passing of a law to determine legislative policy , formulation of rule of conduct etc. and other essential functions , while the legislature alone can do by passing an appropriate legislation . However law making power pertaining to ancillary functions can be delegated to the Executive.

(iii) Retrospective Effect of Delegated Legislation is Subject to Express or Implied,Authority by the Parent Act : When an Act/Legislation is passed, its provisions shall come into force as per the date/dates contained in the Act. Retrospective effect means the provisions of the Act shall come into force from back date i.e with effect from a date of few months ago or few years ago. A subordinate/delegated legislation to have retrospective effect, it must be authorised expressly or impliedly by the Parent Act.

(iv) Delegated/Subordinate Authority cannot pass Tax legislation : The delegated legislative authority i.e. subordinate body cannot pass a tax legislation imposing/levying tax without express or implied authority by the Parent Act.

(v) Other Restrictions : In Addition to the above, the subordinate body cannot pass any legislation affecting the provisions of the Parent Act, Penal Provisions, Jurisdictions of courts, judicial review and amendments in the Parent Act.

LECTURE XVIII

METHODS OF INTERPRETING SUBSTANTIVE AND PROCEDURE LAWS

1. Substantive Law and Procedural Law :--*Law may* be categorised under heads namely, Conventional Law, Natural Law, Customary Law, Public Law, Private Law, Special Law and so on. Similarly, law may be categorised into two most important heads namely 1) Substantive law and 2) Procedural law. The former defines the principles, rules, regulations and also defines various offences. The Indian Contract Act, 1872, The Indian Penal Code, 1860 where as the latter (Procedural or Adjective Law) provides appropriate mechanism for implementation of the various rules and regulations and also prescribes procedure for punishment of offences. Eg. The Code of Criminal Procedure, 1973, The Law of Evidence, 1872, etc. For instance, The criminal Law or Law of Crimes is categorised under two heads namely substantive criminal law and procedural law of crimes. The substantive law of crimes is the Indian Penal Code, 1860. It defines various offences and prescribes punishments for the respective offences. Likewise, the code of criminal procedure 1973 is the procedural law of crimes. It prescribes procedure and provides mechanism for the enforcement of the criminal law.

Let us discuss about some practical example. During the course of trial via sessions court, an accused opens fire and kills a witness for giving evidence against him, the sessions judge in whose presence murder took place, cannot convict him on the spot though he is guilty of murder under section 300 I.P.C and is punishable under section 302 I.P.C with life imprisonment or death sentence . Because , there is a lot of pre-conviction procedure under the Code of Criminal Procedure, 1973.

Substantive Law : The principles of substantive law originated from the principles found in common law and statute law in England. Substantive is that branch of written or statutory law, which defines rights and duties and defines various offences and prescribes punishments for the respective in criminal law. It deals with the relationship between the people and the state and defines various rights and duties of

the people towards the state. It deals with all branches of the private law namely, the law of contracts, law of torts, law of property etc. and also public law namely criminal law.

Procedural Law : It is also known as Adjective Law or Adjectival . It prescribes/provides for various forms of procedure in connection with judicial proceedings for enforcement of law, civil and criminal . So , the word 'Procedure' denotes "mode or form of conducting judicial proceedings . In other words, procedure means a form or manner for enforcement of law.

Salmond defined the 'law of procedure' is the branch of law which governs the process of litigation. It is the law of action-using the term action in a wide sense to include all legal proceedings, civil and criminal. Procedural law, is the 'machinery' for enforcing those right and duties of Substantive Law. Procedural law comprises the rules by which a Court hears and determines what happens in civil or criminal proceedings as well as the method and means by which substantive law is made and administered.

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Distinction between substantive law and procedural law : Following are the notable points of distinction between the substantive law and procedural law.

Substantive Law	Procedural Law
1. It contains a body of rules to determine the rights and duties / obligations of individuals, group of individuals and collective bodies	1. It contains a body of rules that govern the procedure for determining rights and duties of individuals, group of individuals and collective bodies.

2. It is an independent set of laws, which decides the fate of the case	2. It has no such independent existence
3. It cannot be applied in non-legal contexts	3. It can be applied in non-legal contexts
4. It is concerned with the ends of justice, which administration of justice seeks/invokes.	4. It deals with means and instruments, by which the ends of justice are attained.

1. Methods of interpreting Substantive Law or Interpretative cannons of Substantive Law :--Sound and effective rules of construction are to be applied/adopted by the courts for interpretation of a substantive law/enactment/ statute so as to give effect to the protection of substantive rights and discharge of duties. As long as the words in a substantive law/statute are clear and unambiguous, the priority /primacy should be given to "litera legis" of the statute. In case of a substantive statute, the intention of the legislature is to be inferred from the letter of the law. So the best and most appropriate rules of construction are resorted to for interpretation of a substantive law.

The following methods of interpretation are adopted by the jurists for construction of a substantive statute.

(A) Application of the Rule of strict construction in interpreting a substantive law/statute:

Substantive Law/Statute should be continued strictly by applying the rule of strict construction so as to ensure protection to the substantive rights provided for under the statute. The rule of strict construction is one , which limits the application of words used in the statute. When a statute is to be strictly construed nothing should be included within the meaning of the language used , which must be given its exact technical meaning. Strict construction refuses to extend the import of words used in the statute. The intention of substantive law should be inferred from the letter of law. The construction of a statute according to tits letter of law takes the language. Used in its literal sense.

Strict construction of a statue confines its operation to cases which are clearly within the letter of the law as well as

within its spirit and reason. Through the letter of the law may include the given situation that is not enough unless the spirit and reason of the law also include it. The framers of a law are presumed to have in mind a reasonable consistent and intelligible plan or scheme for achievement of the legislative purpose. Such a plan or scheme, as is discoverable from the statutory language, may always be taken into account in interpreting Statute.

The cordinal principle is that , every statute shall have prospective effect , unless it is expressly or by implication (impliedly) made to have retrospective effect . So, a substantive law (statute/enactment) will have always prospective effect only *i.e.,* to say it should not have retrospective (back date) effect. This principle has been enshrined in the latin maxim "Nova constitution futuris farman imponere debet non preateritis", which means " a new law ought to regulate , what is to follow , not the past ". Substantive rights conferred in a substantive law /statute cannot be taken away with retrospective effect by an Amendment Act. For Instance, Penal Statutes (viz. Indian Penal Code, 1860, Dowry prohibition Act, 1961 etc) will have prospective operation only .

(B) Application of the Rule of Harmonious construction in interpreting substantive Law/Statute :

The well know principle of harmonious construction is that , effect shall be given to all provisions of the statute so that any one of the provision can be construed with other provision so as to make it workable . So, the rule of harmonious construction of statutes can be applied/adopted for interpretation of substantive statutes.

2. Methods of Interpreting Procedural Law or Cannons of Interpreting Procedural Laws :--The following method of interpretation are adopted /applied for construction of a procedural statute.

(A) Application of the Rule of Harmonious construction in Interpreting a Procedural Law/Statute: The rule of harmonious construction is a well-recognised rule of interpretation of statutes as the expressions used there in are ordinarily understood so as to harmonize with the object of the statute. The rule of harmonious construction is adopted, while interpreting a substantive statute *i.e.,* the provisions of

procedural law namely, the code of civil procedure , 1908, which contains large number of sections and orders . The plain reading of the language used in the provisions, leads to absurdity. So, the court is vested with dictionary power to modify the language of the provisions within the ambit of the Act (i.e the Procedural Law/Statute)

(B) Application of the Rule Literal construction in interpreting a Procedural Statute :--The rule of liberal construction is also known as grammatical rule interpretation . It is a sound rule of construction and is best suited for interpretation of procedural laws for enforcement, language used in provisions of a statute is given commonly accepted meaning to have most comprehensive application without any adverse effects to the other terms the rule of grammatical interpretation (literal construction) postulates that, it is the duty of the court to expound the law as it stands ,not to modify, or alter or qualify its language.

It is an elementary principle of interpretation that the plain intention of the legislature as expressed by the language is to be accepted and given effect to. This rule is taken as basis of all court decisions in relation to the statutes. According to this rule, the court (Judge) should rely on the exact wording used in the statute and cannot modify the language in order to bring it accordance with his own view as to what is right and reasonable. In case of grammatical interpretation, only the verbal expression of law is taken in to consideration .So ,the court /judges must strictly follow the language used in the statute intact and should not beyond the letters of law (Literal Legis). Further ,the judge should not add anything to it on the ground that the true 'sententia Legis' is not completely or correctly expressed in the words. This principle has been recognised by the Roman Jurists.

LECTURE XIX

PRESUMPTIONS

1. Presumption : Meaning and Definition : The word 'Presumption' literally means "assumption or assuming something". According to Tomlins Law Dictionary, the word 'presumption', which is derived from Latin term 'presumtio' means "a supposition opinion, or belief previously formed".

In the absence of absolute certainty, we resort to presumptions. The word 'presume' means "supposed to be". The word 'presumption' means "an inference from known facts". For instance, A may presume that B is in the restaurant. When A entered into the restaurant, he found B, then his presumption is correct/true. Instead of B, if C (B's brother) is found, his (A's) presumption is incorrect/wrong. Thus, presumptions may be true presumption is incorrect/wrong. Thus, presumptions may be true or untrue. 'Presumption' is an inference, which takes place in the absence of absolute certainty as to truth or falsehood of a fact. In other words, presumption is an inference drawn by the court as to the truth of a particular fact, from other known or proved facts.

Definition :--The term 'presumption', in its largest and most comprehensive signification, may be defined to be defined to be an inference, affirmative or disaffirmative of the truth or falsehood of a doubtful fact proposition, drawn by a process of probable reasoning from something proved or taken for granted.

The term presumption is not defined by the legislature . It means "taking a fact as proof without examination or proof"

In American legal context, The Uniform Commercial Code defines 'presumption' and 'presumed' as follows:

'Presumption' or 'presumed' means that the Trier of fact must find the existence of the presumed unless and until evidence is introduced which would support a finding of its non-existence. In the realm of law of evidence, presumption may be complimentary or supplementary. The Supreme Court in *Izhar Ahmed Khan vs U.O.I.,* [AIR 1962 SC 10520 @ 1066] stated that-

> "The term 'presumption' in its largest and most comprehensive signification, may be defined to be an

Inference, Affirmative or Disaaffirmative, of the truth or Falsehood of a Doubtful Fact or proposition Drawn by a process of probable Reasoning from Something Proved or taken for granted."

2. Presumptions in Interpretation of statutes : The expression "Presumption in Interpretation of Statutes means "The courts , while interpreting a statute must deem/presume certain things to be true and correct . Otherwise, they cannot go ahead further. Because, presumption is a supposition or assumption with which courts proceed to interpret a statutory provision. It is to be noted that, courts start the process of interpretation with the presumptions and end up with the consideration as a result there of.

Following are the instances of presumption in interpretation of statutes :

(i) Presumption as to validity and constitutionality of a statute : All statutes passed by the supreme legislature and state legislatures are presumed to be in accordance (in consonance) with the constitution and are valid and constitutional . Similarly , every subordinate / delegated legislation is in accordance with the provisions of the constitution and the Parent Act and hence it is presumed to be valid and constitutional

Parliament enacts law. No law can be made against the provision and spirit of the constitution. The judiciary is the guardian of the constitution. Courts interpret the Statutes made by the Union and state Governments. It is empowered to strike down the unconstitutional provisions of statues declaring them ultra vires.

The presumption is always in favour of an enactment/ statute. The burden of proof as it is ultra vires is vested in a person, who challenged the constitutionality/validity of an enactment. (*CST, M.P vs. Radhakrishnan,* (1979) 2 SCC 249).

The court should make every effort to save a statute from becoming unconstitutional. A restricted or extended interpretation of the statute has to be given to save a statutory provision from the vice of unconstitutionality. Of the available interpretations, Court must prefer the one which makes the statute constitutional. [*M. Rathinaswami vs. State of T.N.,* (2009) 5 SCC 625].

In *Chiranjit Lal Chowdhuri v Union of India* , [(1950 SCR 869)] the court held that, the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there is a clear transgression of the constitutionals principle. Where the validity of law is challenged in a Court of law, the Court of law, the court is bound to presume that the law is valid when it is made by a Competent legislature .It means, the Court must proceed on the assumption that the legislature did not make a mistake while making the legislation.

Where the validity of law is challenged in a Court of Law, the Court is bound to presume that the law when it is made by a competent legislature .It mean the court must proceed on the assumption that the legislature did not make a mistake while making the legislation.

(ii) Presumption as to Territorial Operation or Presumption against Extra territorial operation of Statutes : Generally , the opening words of any statute contains that .. the Act is applicable to the whole of India except and so on. It implies that an Act/Statute has no extra territorial operation. The term 'territory' is related to or connected with a part of a country or territory.'

Territory is the land or country belonging to or under the dominion of a ruler or State. Broadly ' territory' means with a State and, 'extra-territory' means outside of the State. The words 'Extra-territorial operation' are used in two different senses as connoting firstly, law in respect of acts or events, which take place inside the state but have operation outside, and secondly, laws with reference to the nationals of a State in respect of their acts outside.

The ordinary principle of construction is that the legislature is dealing with the subject-matter situated within its own territorial jurisdiction. Now, prima facie, the legislation of a country is territorial. Its Acts are intended to apply to matters occurring within its realm and not beyond it , and this principle applies especially to acts that are penal to their character. According to the comity of nations, all laws are presumed to be territorial only. In other words, they are presumed against extra-

(iii) Presumption as to conformity of the statute with International Law :--A statute being a national law /Municipal

law , is presumed that , it is in conformity with the International Law/Law of Nations. We are now in a global village and are subject to rules and regulations governed by the International community through United Nations Organisation (UNO or UN) and Other organs of the UNO namely International court of Justice , Security Council etc. All the member states should respect the resolutions taken in International Conventions therefore , the courts , while interpreting a statute presume that , it is conformity with the principles of International Law.

(iv) Presumption that legislature does not waste its words [Legislature does not use superfluous words] [Tautology] :--It is presumed that the legislature is deemed not to waste its words or to say anything in vain. The presumption is always against superfluity in a statute. 'superfiuous' means extra or excess. Legislature is not expected to have used any extra or surplus word in language. It is presumed that every word have been inserted at a proper place with a definite abject and such, none of the words can be ignored while construction a provision.

(v) Legislature does not waste its words or does not use superfluous words :--Any statute passed by a legislative is for public purpose and pious object . So the words used in the statute are presumed to appropriable, clear and unambiguous so as to construe the same to achieve the object of the Act and to fulfil the legislative intent.

(vi) Presumption that legislature knows the law, judicial decision :--legislature is presumed to know the law and judicial decisions as to interpretation of words and language used in a statute. Therefore the court will proceed to construe a language with the assumption that the legislature was aware of existing statutes, the rules of statutory construction and the judicial decision.

(vii) Presumption as to Re-enactment : When a statute is too old and most of the provisions are amended, the legislative may re-enact the old statute by passing new statute in its place with necessary changes/modifications. In such cases there is a presumption that the legislative reproduces the material of the earlier statute into the subsequent Act. For instances, the companies Act, 1956 has been repealed and replaced by the Companies Act, 2013. Some of the provisions in the Old Act *i.e.,* the Companies Act 1956, have

been re-enacted in the new Act *i.e.*, the Companies Act, 2013 with change of section numbers. In other words, some of the provisions of the old Act and new Act are identical with change of section numbers.

(viii) Presumptions regarding Jurisdiction of Courts :--It is presumed that the court is presumed to have jurisdiction and the judge is competent to try the case. Jurisdiction of court means, power of the court to hear/try and decide the case involved and also the competence of the judge to try and decide the case. For Instance, the district sessions court has jurisdiction to try a murder case and a district sessions judge and additional sessions judge is competent to try and decide the murder case, but not a First Class or Chief Judicial Magistrate.

The jurisdiction can be classified into three kinds: territorial jurisdiction, pecuniary jurisdiction and jurisdiction of subject-matter. The jurisdiction with reference to place is called territorial jurisdiction. The power of court may be exercised within defined territorial limits. The jurisdiction relating to value is known as pecuniary jurisdiction. The court may be competent to take cognizance of a subject-matter of prescribed or restricted value. The court may also have a jurisdiction with reference to nature of subject-matter. It may be competent to deal with matters of a specified kind, for example testamentary or matrimonial causes.

Mubarak Ali vs. State of Bombay, AIR (1957) SC 857- In this case, Mubarak Ali was Pakistani national doing business. at Karachi. He was dealing in export and import business. He wrote a number of letters to the businessmen in Bombay, And also gave telegrams and telephone calls instructing the Bombay businessmen to give away five lakhs of rupees to his agent at Bombay. Ultimately, it was found that Mubarak Ali cheated the Bombay businessmen. He filed a case against Mubarak Ali who was in London, the British government arrested him and extradited him to India. He was tried in Bombay courts for the offence of cheating and argued that Indian courts had no jurisdiction to punish him. The supreme court held that the exercise of criminal jurisdiction depends upon the locality of the offence committed and not upon the nationality or locality of the offender. Therefore, it was found that the letter were received at Bombay and the money was

paid in Bombay and thus, the whole offence of cheating took place in Bombay. Therefore, Mubarak Ali was punished. In the above decision the following two things were made clear: (a) state can make law with extra-territorial operation. (b) The offender is liable for offence committed within India when he is physically in India at the time of its commission, whatever may be his nationality, according to section 4 of IPC , jurisdiction also extends over ships, not only when they are sailing on the high seas, but also while they are in territorial waters; the territorial jurisdiction is twelve nautical miles. The admiralty jurisdiction extends to 'piracy' cases as well, 'piracy' means robbery committed on –board a ship. The jurisdiction to try offences committed on the high seas is known as *admiralty jurisdiction.* According to the international law, high seas are free and open and do not belong to any country. The general principal is that any ship on the seas regarded as a floating island belonging to the nation, where it is registered or whose flags it is flying. Further article 245(2) of the constitution of India says that "*no law made by the parliament shall to be invalid on the ground that it would have extra-territorial operation*".(b) presumptions against ousting established jurisdictions: As a rule, a statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect. Exclusion of jurisdiction of civil court must be explicitly expressed: the exclusion of the jurisdiction of the civil courts is not to be readily inferred; such exclusion must either be explicitly expressed or clearly implied.

LECTURE XX

INDEPENDENCE OF JUDICIARY, JUDICIAL REVIEW AND JUDICIAL RESTRAINT

SYNOPSIS

This Lecture deals with the following topics

1. Independence of Judiciary
2. Judicial Review
3. Judicial Restraint
4. Jurisdiction of Supreme Court

* * * * *

1. Independence of Judiciary :

Introduction : There are three organs / authorities in the governmental machinery, which function in accordance with the constitution and in co-ordination with each other. The doctrine of separation of powers, envisages independent functioning of the three organs. That is to say that the executive should execute executive functions only. Legislature should execute legislative (law making) functions only and similarly the judiciary should discharge judicial functions / powers only. In India, the doctrine of separation of powers is not possible / practicable for the reason, one organ encroaches / interferes in the powers /functions of the other organ.

Independence of Judiciary : The Constitution of India provides various provisions to ensure the Independency of Judiciary headed by the Supreme Court as stated hereunder:

1. Security of Tenure (Appointment, tenure and removal) : The Judges of the Supreme Court are appointed by the President of India. The Chief Justice also is appointed by the President with the consultation of the other Judges of the Supreme Court and High Courts (if he finds such consultation is necessary). He holds office until he attains the age of 65 years. His term of office is fully secured. The Judge of Supreme Court or High Court cannot be removed/ terminated except by impeachment motion with two thirds

majority in the Parliament. In March, 1990, such impeachment motion was made against Justice V. Ramaswamy, the then Judge, Supreme Court. But, it was defeated since there was no two third majority in the House. Only 200 members voted in favour of the impeachment motion against him.

2. Jurisdiction : The Constitution conferred wide powers on the jurisdiction of the Supreme Court. The Parliament may extend its jurisdiction, but cannot curtail the same.

2. Judicial Review :--The fundamental principle of rule of law is all authorities and their actions are subject to law. The administrative authorities is discharging their duties may act beyond the power (ultra vires) or abuse the power conferred on them. As a result, individual rights and liberties/ freedoms may be affected. Therefore, it is necessary that there should be judicial control/review over misuse of discretionary power of the administrative authorities so that the rights of the people are not adversely affected.

The term 'Review is an activating concept in common parlance it means "to view again" or "to refer again". In literal sense, 'review' means "formal examination /re-examination of something so as to revive i.e to bring about certain changes / modify , if necessary . The dictionary meaning of the word 'review' is "an examination with a specific purpose"

So, the expression 'Judicial Review' in legal parlance means "a legal activation of people's life. In India, despite elapse of seven decades (70 years) after independence, there is lawlessness and uncertainty of laws for the reason, many branches of law remain uncodified (Eg. the Law of Torts, the Administrative Law, Environmental Law etc.) and certain concepts like "basic structure/basic feature of the constitution coined by the supreme court in Kesavananda Bharati's case, State/Government Liability for torts/wrongs committed by Government servants remain uncertain as there is no rule or test determined/defined by the legislature so far. So, the lawlessness and uncertainness has been overshadowed with the intervention of the judiciary with the help its review power conferred under the constitution.

Judicial Control or Review in India : The power of the review is a great weapon in the hands of judiciary. With the

help of this power, the judiciary (courts) is empowered to declare any executive or legislative action, i.e. Government order or Law, which is inconsistent with the rule of law or constitution as unconstitutional. The power of judicial extends towards legislative action (i.e any law passed by the parliament, state legislatures and subordinate bodies), Judicial action (*i.e.*, the decision taken /judgement delivered by lower court) and administrative action (*i.e.*, any action by way of order rule etc.)

'judicial review means' over-seeing by the judiciary of the exercise of the power by other co-ordinate organs of the government with a view to ensuring that they remains confined to the limits drawn upon the powers by the constitution." The Encyclopedia of America constitution states that-"judicial review in its most widely accepted meaning is the power of the courts, to consider the constitutionality of acts of other organs of government when the issue of constitutionality is germane to the disposition of laws suits properly pending before the courts ' authority to refuse to enforce and in effect invalidate, governmental acts they find to be unconstitutional." Thus JUDICIAL REVIEW is not to be construed as a 'processual tinkering' but a substantial switch to justice process. Its play and operation is not confined to procedural law domain only but also extends to substantial law domain.

The object and scope of Judicial Review : The general rule is that courts should not interfere with the actions taken in exercise of discretionary powers by the administrative authorities. While disposing the case *'Westminster Corporation vs. London & North Western Rly. Co.* 1905' expressed as follows: 'Where the Legislature has conferred the power to a particular body, with a discretion how it is to be used, it is beyond the power of any court to contest that discretion.'

The Supreme Court of India also expressed the similar views in a number of cases, viz. *Gopalan vs. State of Madras,* AIR 1950 SC 27, *Lakshanpal vs. Union of India,* AIR 1967 SC 908, etc.

However, unfettered and vast discretionary powers on the administrative authorities leads to mal-administration, corruption, suppression and atrocities. Therefore, there should be judicial control/review over the decisions given in exercise of discretionary powers by the administrative authorities.

Kinds of Judicial Review :—Indian Constitution provides for judicial review. Articles 32 and 226 of the Constitution confer on the Supreme Court and High Courts respectively the power of judicial review to examine the constitutional validity of a law passed by the Parliament or State Legislature.

There are different Kinds of Judicial Review over administrative discretion as detailed below:

DIFFERENT KINDS OF JUDICIAL REVIEW OVER ADMINISTRATIVE DISCRETION

A	B	C	D
Failure to Exercise Discretion (a) Sub-delegation; (b) Imposing fetters on discretion by self-imposed rules of policy; (c) Acting under dictation; and (d) Non-application of mind. and	Excess or abuse of discretion (a) Exceeding jurisdiction; (b) Irrelevant consideration; (c) Leaving out relevant considerations; (d) Mixed considerations; (e) Mala fides; (f) Improper purpose or Collateral Purpose; (g) Colorable exercise of power; (h) Violation or principles of natural justice; (i) Unreasonableness.	Violation of fundamental rights	Ultra Vires

There are different valid and reasonable grounds, on which the courts can interfere with the administrative discretion. Mainly there are three grounds. They are:

(A) Failure to Exercise Discretion

The parent Act confers certain powers on the administrative authority. Such authority should exercise such powers within the limits and bounds mentioned in the parent Act. If he fails to exercise discretionary powers, then the courts can interfere. Generally, there are four circumstances, in which failure to exercise discretion arises. Those circumstances are:

1. **Sub-delegation :** 'Delegatus non potest delegare'. A delegate cannot delegate. A person to whom powers have been delegated cannot delegate them to another.

2. **Imposing fetters on discretion by self-imposed rules of policy :** The authority has discretion on certain general policy. But he imposes fetters on policy to be applied by it rigidly to all cases coming before him for decision.

3. **Acting under dictation :** The parent Act delegated certain powers upon certain administrative authority. He himself should perform such action. If he seeks the instructions from any other person, or from his superior person, it becomes bad in law. It is known as acting under dictation.

4. **Non-application of mind :** Where the discretionary powers are vested in the executive, he must apply it with highest care, diligence, caution and responsibility. He should not act mere mechanically. He should apply his own mind according to the circumstances. If he performs without due care and non-application of mind, then he comes under failure to exercise discretionary powers. It is bad in law.

(B) Violation of Fundamental Rights

When discretionary power is conferred on an administrative authority, it should be exercised according to law. Otherwise, it amounts to abuse of power. It is inferred under the following circumstances:

(a) Exceeding jurisdiction: An administrative authority is required to exercise discretionary power within

the limits of the statute. An action or decision going beyond what is authorised by law is ultra vires. For example, if the administrative authority is empowered to control the price of bread it will be in excess of its jurisdiction to control the price of butter. The entire order will be ultra vires and void for exceeding jurisdiction.

Calcutta Electricity Supply Corporation vs. Workers Union, AIR 1959 SC 1191 – In this case, it was held that, if an authority is empowered to award a claim for the medical aid of employees, it will be exceeding in its jurisdiction in granting the said benefit to the family members of the employees.

(b) Irrelevant considerations: A discretionary power conferred on an administrative authority by a statute must be exercised on relevant and not on irrelevant or extraneous considerations. It means that the power must be exercised on considerations relevant to the purpose for which it is conferred. If the authority takes into account wholly irrelevant or extraneous circumstances, the exercise of power by the authority will be ultra vires and the action bad.

Thus, in *Ram Manohar Lohia vs. State of Bihar*, AIR 1966 SC 740, under the Defence of India Rules, the authority was empowered to detain a person to prevent subversion of 'public order'. The petitioner was detained with the view to prevent him from acting in a manner prejudicial to the maintenance of 'law and order'. The Court set aside order of detention. In the opinion of the Court, the concept of 'law and order' was wider than the concept of 'public order'.

(c) Leaving out relevant considerations: While exercising the discretionary power the administrative authority is expected to take all the relevant factors into consideration. Failure to do so will render the decision invalid. It is very difficult to prove that certain relevant factors were not taken into consideration by the authority, unless detailed reasons are given in the impugned order, from which it can be inferred.

In *Rampur Distillery vs. Company Law Board*, AIR 1970 SC 1978, the Company Law Board refused to give its approval for renewing the managing agency of the company on the ground that Justice Vivin Bose Commission had severely criticised the past dealings of the Managing Director Mr. Dalmia. The Court conceded that the past conduct of the

Directors was a relevant consideration but pointed out that the Board has failed to take into account their present conduct, which is more relevant to consider the application of renewal of managing agency.

(d) Mixed considerations: Sometimes, it so happens that the order is not wholly based on irrelevant or extraneous considerations. It is founded partly on relevant and existing considerations and partly on irrelevant or non-existent considerations. Judicial pronouncements do not depict a uniform approach on this point.

In *Dhiraj Lal vs. Commissioner of Income Tax*, AIR 1955 SC 271 – there was a question before the Supreme Court whether the applicant was liable to assessment or not. The tribunal relying on relevant as well as irrelevant materials held the appellant liable. The Court quashed the order of assessment because of the use of inadmissible material.

In *Shibban Lal vs. State of U.P.* AIR 1954 SC 179 – the petitioner was detained on two grounds. Later the government revoked an order of detention on one of the grounds but continued detention on the other ground. The Court quashed the original detention order.

(e) Mala fide: The expression *'mala fide'* means "dishonest intention or bad faith or corrupt motive." When the exercise of discretion is tainted with mala fide the decision is bad and it is liable to be set aside. The person alleging mala fide must prove it, and proving it against the mighty administration is a very difficult task.

In *Pratap Singh vs. State of Punjab*, AIR 1964 SC 72 – the petitioner was a civil surgeon and he had taken leave preparatory to retirement. Initially the leave was granted but subsequently it was revoked, and a departmental enquiry was ordered against him and he was placed under suspension. The enquiry was instituted against him on the charge of receiving Rs.16 from a patient in an illegal manner during the period he was working as a civil surgeon and ultimately he was removed from service. The petitioner alleged that all these actions were instigated by the Chief Minister because he had refused to yield to certain illegal demands of the Chief Minister and members of his family. Though there was no direct evidence proving mala fide, the Court has inferred mala fide

from the circumstances of the case and quashed the order by issuing a writ of certiorari.

In *Sadanandan vs. State of Kerala,* AIR 1966 SC 1925 – the petitioner, a kerosene dealer, was detained under the Defence of India Rules with a view to prevent him from acting in a manner prejudicial to the maintenance of supplies and services essential to the life of the community. The petitioner challenged the detention alleging mala fide against the D.S.P. (civil supplies cell) that he had made false reports against the petitioner so that he would be eliminated as a wholesale kerosene dealer and a relative of the D.S.P. might benefit by obtaining the distributorship for kerosene. No affidavit was filed by the D.S.P. denying the allegations made against him and the affidavit filed by the Home Secretary was very vague and defective in many material respects. The Court concluded that the detention was tainted with mala fide and the order was quashed by issuing a writ of certiorari.

In *Rowjee vs. State of A.P.* AIR 1962 SC 962 – the State Road Transport Corporation had framed a scheme for nationalization of certain bus routes in western parts of the Kurnool District. This was done as per directions of the Chief Minister. It was alleged by the petitioner that the particular routes were selected with mala fide to take vengeance against the private transport operators of that area as they were his political opponents. The Supreme Court upheld the contention and quashed the order.

(f) Improper purpose or Collateral purpose: If the statutory power conferred on the administrative authority for a particular purpose and if exercised for some other purpose, it is called 'abuse of discretion for improper purpose' and the action may be quashed. In the case of mala fide the action is tainted with personal ill will or malice, but it is not so in the case of improper purpose. Even if the action of an authority is motivated by public interest it is liable to be set aside if it was exercised for a purpose not covered by the statute.

In *Nalini vs. District Magistrate,* AIR 1951 Cal. 346 – under the relevant statute power was conferred on the authority to rehabilitate persons displaced from Pakistan as a result of communal violence but it was exercised to accommodate a person who had come from Pakistan on a Medical Leave. The order was set aside.

Similarly, in *Ahmedabad Mfg. And Calico Printing Co. vs. Municipal Corporation Ahmedabad*, AIR 1956 Bom. 317 – the relevant statute empowered the Commissioner to disapprove the construction of any building if it contravened any of the provisions of the statute. If the said power is exercised to bring pressure on the company to provide drainage facility to its other existing buildings, the order cannot be upheld.

In *State of Bombay vs. K.P. Krishnan*, AIR 1960 SC 1223 – the workmen resorted to go slow during the year. On this ground, the government refused to make a reference. The Supreme Court held that the reason was not germane to the scope of the Act and quashed the order.

(g) Colourable exercise of power : Where the discretionary power is exercised by the authority ostensibly for the purpose for which it was conferred, but in reality for some other purpose, it is called colourable exercise of power. Colourable exercise of power arises when the statute does not prescribe the particular manner in which discretion must be exercised, and the authority exercises the power under the colour or guise of legality.

It is very difficult to draw a dividing line between improper purpose and colourable exercise of power. Both are almost same and the differences if any are only illusory. If the discretion is exercised for an improper purpose, there is colourable exercise of power. Similarly, if there is colourable exercise of power there is improper purpose. It may be submitted that the use of any one of the phrase improper purpose or colourable exercise may be avoided.

(h) Violation of principles of natural justice : If the administrative authority, while exercising its discretionary power, violates the principles of natural justice, the court can set aside the order/decision of the administrative authority.

(i) Unreasonableness : The administrative authority must use its discretionary power with utmost reasonableness. If it acts without reasonableness, the court can set aside its orders and decisions.

(C) Infringement or Violation of Fundamental Rights

Part-III of the Indian Constitution containing Articles 12 to 35 confers on citizens certain Fundamental Rights. An

administrative authority must exercise its discretionary powers in consonance with those rights.

In *West Bengal vs. Anwar Ali*, AIR 1952 SC 75 – The validity of the West Bengal Special Courts Act, 1950 was challenged, which empowered the state government to refer any offence for trial by a Special Court. According to the preamble of that Act, the purpose of the Act was speedier trial of certain offences. The respondent was tried and convicted by the Special Court. He challenged the validity of the Act on the ground that it was violative of Art.14. The Supreme Court held the Act invalid on the ground that it confers a wide discretion on the government as there was no yardstick for grouping either of the persons or offences. Moreover the expression 'speedier trial' was too vague, uncertain and indefinite.

In *Chandra Bhan Singh vs. Bihar*, AIR 1984 SC 1767 – the government acquired vast area of land belonging to several persons but released lands owned by a family by way of pure and simple favouritism. The acquisition order was held invalid on the ground of violation of Art.14.

(D) Ultra Vires

The expression 'Ultra vires' means "beyond powers". The discretionary power conferred on the administrative authority must be exercised within the limits. If the administrative authority in exercising the discretionary power exceeds the limits, it is said to be ultra vires. When the limits of the discretion are precisely defined, it is easy to check the excess, but if the discretion conferred is too wide, checking it on the ground of ultra vires is a difficult task. In such cases the limits of the discretion must be ascertained first.

In *Gurbachan Singh vs. Bombay*, AIR 1952 SC 221 – the Bombay Police Act authorised two kinds of externments: i) externment from greater Bombay; and ii) externment from the State of Bombay. In the first kind the order of externment must specify the place where (within the state) the externee was to remove himself, whereas in the second type of cases the externee might stay anywhere outside the state. An externment order issued under the first kind asking the externee to leave Greater Bombay and go to Amritsar was held ultra vires the powers conferred. (See also *Ram Manohar Lohia vs. State of Bihar*, AIR 1966 SC 749).

3. JUDICIAL RESTRAINT

Indian constitution, conferred on judiciary to maintain the independence of judiciary and to uplift the ideals and goals enshrined in the constitution in the constitution for establishment of welfare state. Administration of justice to be independent and effective, judicial restraint is necessary . Quality of decision making enables the judges to command respect and deliver goods upto the mark to maintain the independence of judiciary. Judiciary by self-restraint commands respect and will be able to deliver pure and impartial justice.

The concept of Judicial review is not to be understood as a ferocious horse and its ride is always regulated by self-restraint. Judicial review embellishes judicial process and so it should not be allowed embezzle the end product of law *i.e.* justice to serve sectarian purpose. Even in realization of good ideals meant for many hapless disadvantaged lot, judicial review should not appear to be inclined to one wing and it should act as a lever to reconcile and balance conflicting interests. Over-zealous judicial review and activism and boomerang and judicial restraint is only the curative and preventive dose to counter adverse results in judicial process.

The Supreme Court in *Tata cellular vs. Union of India,* stated, The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention, the other covers the scope of the court's ability to quash an administrative decision on its own merits. These restraints beat the hallmarks of judicial control over administrative action.

4. Jurisdiction of the Supreme Court :--The Supreme Court of India is the Apex Court of our Country. Its jurisdiction may be explained with reference to the following heads :

1. Original Jurisdiction
   - (i) Writ Jurisdiction (Article 32)
   - (ii) Exclusive Jurisdiction (Article 131)
2. Appellate Jurisdiction
   - (i) Interpretation of the Constitution (Article 132)

(ii) Civil Matters (Article 133)

(iii) Criminal Matters (Article 134)

(iv) Special Leave to Appeal (Article 136)

3. Advisory Jurisdiction (Article 143).

1. Original Jurisdiction : The Original Jurisdiction of the Supreme Court may be explained as follows :

(i) Enforcement of Fundamental Rights (Article 32); and

(ii) Centre-State Disputes (Article 131).

(i) Enforcement of Fundamental Rights (Article 32) :--Article 32 of the Constitution confers original jurisdiction on the Supreme Court to enforce Fundamental Rights. It is empowered to issue direction or orders or different writs viz., writ of habeas corpus, mandamus, prohibition etc. under Article 32. An individual can directly approach the Supreme Court.

Article 32 confers wide (enormous) power on the Supreme Court. Article 32 empowers Supreme Court to relax the traditional rule of Locus Standi and allows public interest litigations at the instance of public spirited citizens.

Under Article 32, the Supreme Court can provide relief to bonded labour, under trial prisoners *(Sunil Batra Case).* Victims of police torture (*Saheli, A Women's Resource Centre vs. Commissioner of Police, Delhi*) etc.

(ii) Centre-State Disputes (Article 131) : Being the Chief appellate tribunal, it has original jurisdiction to settle the disputes.

(a) between the Centre (Union of India) and one or more States;

(b) between Centre and State/States on one side and one or more States on the other side, and

(c) between two or more States.

2. Appellate Jurisdiction : It may be explained as follows :

(i) Interpretation of the Constitution (Article 132) :--Article 132 (1) empowers the Supreme

Court to interpret any matter involving the question of law as referred to it by High Court under Article 134A.

(ii) **Civil Matters (Article 133)** :--Article 133 confers jurisdiction on the Supreme Court to hear appeal from any judgment by the High Court in civil matters. It must be certified by the High Court under Article 134A.

(iii) **Criminal Matters (Article 134)** :--According to Article 134(a)(b), an appeal may lie before the Supreme Court from any sentence by High Court without the certificate of the High Court.

According to Article 134(c) an appeal lies before the Supreme Court, if the High Court certifies under Article 134A.

(iv) **Special Leave to Appeal (Article 136)** :-- Article 136 of the Indian Constitution empowers the Supreme Court to grant Special Leave to appeal from any judgment, decree, determination, sentence or order in any matter passed by any Court or tribunal. The Supreme Court can exercise discretionary power in this connection.

Grounds for granting Special Leave :--The remedy under Article 136 is extraordinary and discretionary, and hence, is granted in exceptional cases on the following grounds. If the tribunal--

1. has acted in excess of the jurisdiction;
2. failed to exercise its apparent jurisdiction;
3. committed an error of law apparent on the face of the record;
4. acted illegally;
5. violated the principles of natural justice;
6. the decision involved an important question of law

In view of the increasing number of appeals under Article 136, the Supreme Court suggested the Government (Janata

Government) to curtail its jurisdiction under Article 136. But the proposal could not be materialised since the lawyers opposed it.

3. **Advisory Jurisdiction (Article 143) :**--Article 143 of the Constitution speaks about the advisory jurisdiction of the Supreme Court. The President of India refers to the Supreme Curt, for its opinion, any matter, which involves any question of fact or law having public importance. Then, the Supreme Court gives its advisory opinion. The President may or may not follow the same since it is not mandatory.

LECTURE XXI

1. Star Decisis
2. Ratio Decidendi
3. Obitur Dictum

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1. STARE DECISIS

The main object of judiciary is to deliver pure and impartial justice. The judge while deciding a case, delivers judgement on the basis of some source of law namely, legislation, custom precedent etc. Further, the judges are empowered to exercise discretionary power to decide a case in the interests of justice irrespective of law and other sources. Accordingly, the rules , of law and other sources. Accordingly, the rules, principle of law coined by the judges in England is called "Common Law . Similarly, if a lower court decides a case as per the decision given by a higher/superior court under the similar/same/identical facts and circumstances, it is called precedent or "Judicial Precedent". Therefore, judgements of the courts are recorded and reported for reference of future cases.

Earlier, i.e prior to 17th century, there was no practice of reporting judgements by courts of law. The practice of reporting judgements was started for the first time in England in the case of – *Mirehouse v Rennel,* (1833) ICI & F 527). In this case, "The Theory of Stare Decisis" was coined, expound by Park, C.J , who enunciated the urgent need and necessity of recognising the binding force of judicial precedents.

In course of time, the principle or doctrine of Stare Decisis is adopted as a source of law . The doctrine of Stare Decisis is based on the maxim "**Stare decisis et non quieta movere**" which means, "**to stand by decisions and not to disturb, what is settled**". The essence of this doctrine was explained by the Chief Justice, Sir Edward Coke in his own class as, "those things, which have been adjudged ought to rest in peace".

The expression "Stare Decisis" means "Stand by the previous decision". This doctrine enunciates that long standing decisions/judgements of the supreme court must be followed

by the lower courts even though the decision in due course has been found to be erroneous. It is based on the principle **"Via Trita via tuta"**, which means **"a frequent path is a reliable path"**. Stare Decisis is an unwritten social rule , which contains the cluster of rules and values on shared understanding among the group. According to his doctrine, "declaration of law should be certain and final for the reason , the people should have trust and confidence over the principles laid down and propositions established by courts .

In *Brownsea Haven Properties vs. Poole Corpn,* (1958) Ch 574 (CA) Lord Evershed, M.R. observed that, there is well established authority for the view that a decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision.

Justice Brandies in his dissenting opinion in *State of Washington vs. Dawson & Company,* (1923) 264 US 219 held that State decisis is ordinarily a wise rule of action. But it is not a universal and inexorable command.

M.P. Tandon rightly points out that if the rule of Stare Decisis were followed blingly and mechanically, it would dwarf and stupefy the growth of the law affect the capacity to adjust itself to the changing needs of the society Interpretation of Statutes-2002 M.P. Tandon, P-260.

Justice P.N. Bhagwati in *Bachan Singh vs. State of Punjab,* AIR 1982 SC 1325 stated that, "We must therefore rid State Decisis of something of its petrifying rigidity and warm ourselves with Cordozo that in many instances, the principles and rules and concepts of our own creation are merely apercus and glimpses of reality and remind ourselves of the need of reformulating them or at times abandoning them altogether when they stand condemned as mischievous in the social consciousness of the hour..... The social consciousness which it is business as hudges to interpret as best as we can."

In *Mirehouse vs. Rennell,* [(1833) 1 CI& F 527] the theory of stare Decisis was established. Since then, it became a characteristic feature of the legal system of England and India. Under the provision of the Constitution of India, the doctrine of Stare Decisis has been recognised under Article 141. It says

that the law declared by the Supreme Court of India shall be binding on all the courts in India including the Supreme Court of India itself.

In *Bengal Immunity Co. Ltd. vs. State of Bihar,* [AIR 1953 Pat 87] the Court held that, the judgment of the supreme Court of India though binding on the same Court, but it free to depart from its previous decisions if valid reasons are recorded for doing so.

In *Minerva Mills vs. Union of India,* [AIR 1980 SC 1789 : (1980) 3 SCC 625] the Supreme Court explained the need of certainty and continuity in the application of law, uncertainty by way of over-ruling method creates confusion in understanding the correct position so as to any transaction. Hence, the binding force of judgments of the highest court must be of practice.

In *Yedlapati Venkateswarlu vs. State of A.P.,* [AIR 1978 AP 333] the Court held that, if any contrary views are expressed by different division benches, the correct view be given by full bench. Thus, in India the principle of Stare Decisis is recognised and the binding value of Stare Decisis is recognised and the binding value of the judgments is accepted. However, it is be noted that the rule of Stare Decisis is not so imperative or inflexible.

2. RATIO DECIDENDI

The expression 'Ratio Decidendi' is a traditional principle, which confers on judge, power to decide the case before him for adjudication even in the absence any provision (legislation, precedent, custom etc.) by formulating a new rule. In other words, a judge according to this doctrine, is empowered to make/formulate a law, only by an actual application of rule in the decision of a case 'Ratio Decidendi' is a latin maxim, which means "the reason or the rationale for the decision". It is that part of the judgment, which decides the case on the basis of the material facts and circumstances of the case". Therefore, the judge should not leave any case undecided on the pretext/ ground of no provision to decide the case".

Keeton observes that "the ratio decidendi of a decision is the principle of law formulated by a judge for the purpose of deciding the problem before him. Keeton-The Elementary Principles of Jurispudence-2nd. Edition-P-106. The Proposition

of law which was necessary for the decision, or could be extracted from the decision, constitutes the RATIO.

The underlying principle of a judicial decision, which is only authoritative is termed as Ratio Decidendi. As Salmond observes, the concrete decision is binding between the Parties to it, but it is abstract ratio decidendi which alone has the force of law as regards the world at large M.P. Tandon-Interpretation of Statues (2002) ALA P-263.

3. OBITUR DICTUM

The principle 'Obitur Dictum' is opposed/contrary to the principle of 'Ratio Decidendi'. Ratio decidendi is binding, while the obitu dictum/dicta is not binding. According to Prof. Keclon, "Obiter dicta" is a statement of law made by a judge in the course of a decision, arising out of the circumstances of the case, but not necessary for the court". The court, during the course of proceeding, is supposed to decide the issues raised by the parties and also considers the matters of collateral relevance, a part from the main issues and passes certain remarks known as 'Obitur Dieta'. In simple words, opinion expressed by a judge, which is not material to the decision of court is not binding and is called 'obitur diction'. In other words, pronouncements other than ratio decidenti are categorised as obitur dictum and are not authoritative and hence not binding. However, obitur dictum as opinion expressed by high authority is of great importance. The supreme in –*Municipal Committee, Amritsar vs. Hazara Singh* (AIR 1975 SC 1087) held that, even obitur dictum of the supreme court should be accepted as binding. But, it does not mean that every statement in the judgment should be attacted by Article 141 of the constitution. Therefore, Statements on matters other than law have no binding force.

> "Dicta are of different kind and of varying degree of weight. Sometimes they may be called almost casual expression of opinion upon a point which has not been raised in the case, and is not really present to the judge's mind. Such dicta though entitled to the respect due to the speaker, may fairly be disregarded by judge before whom the point has been raised and argued in away to bring it under much fuller consideration. Some dicta, however, are of different kind; they are although not necessary for the decision of the case deliberate

expression of opinions given after consideration upon a point clearly brought and argued before court. It is open no doubt to other judges to give decision contrary to such dicta but much greater weight attaches to them than to the former class."

Therefore, it is to be noted (borne is mind) that every judgement must be read as applicable to a particular fact, proved or assumed to be proved. The observation of the judges of great eminence carry great weight, particularly with regard to the provisions of an enactment.

Legal Maxims With Their Meanings

1. **Ab Initio** – From the beginning.

2. **Actionable per se** – The very act is punishable and no proof of damage is required.

3. **Actiopersonalismoritur cum persona** – A personal right of action dies with the person. *In other sense, if he dies the right to sue is gone.*

4. **Actoriincumbit onus probandi** – The burden of proof is on the plaintiff.

5. **Actus Reus Non Facit Reum Nisi Mens Sit Rea** – Conviction of a crime requires proof of a criminal act and intent. *or* an act does not make a defendant guilty without a guilty mind. *or* an act does not constitute guilt unless done with a guilty intention.

6. **Ad hoc** – For the particular end or case at hand.

7. **Alibi** – At another place, elsewhere.

8. **Amicus Curiae** – A friend of court or member of the Bar who is appointed to assist the Court.

9. **Ante Litem Motam** – Before suit brought; before controversy instituted OR spoken before a lawsuit is brought.

10. **Assentiomentium** – The meeting of minds, i.e mutual assents.

11. **Audi alteram partem** – No man shall be condemned unheard.

12. **Bona fide** – In good faith.

13. **Bona vacantia** – Goods without an owner.

14. **Bonijudicis est ampliarejurisdictionem** – It is the part of a good judge to enlarge his jurisdiction, i.e. remedial authority.

15. **Caveat** – A caution registered with the public court to indicate to the officials that they are not to act in

the matter mentioned in the caveat without first giving notice to the caveator.

16. Caveat actor – Let the doer beware.

17. Caveat emptor – Let the buyer beware.

18. Caveat venditor -Let the seller beware.

19. Certiorari – A writ by which orders passed by an inferior court is quashed.

20. Corpus – Body.

21. Corpus delicti – The facts and circumstances constituting a crime *and* Concrete evidence of a crime, such as a corpse (dead body).

Also,

It refers to the principle that 'a crime must be proved to have occurred before a person can be convicted of committing that crime.' (This definition is mostly used in Western Law.)

22. Damnum sine injuria – Damage without injury.

23. De facto – In fact.

24. De jure – By law.

25. De minimis – About minimal things.

26. De Minimis Non Curat Lex – The law does not govern trifles (unimportant things) *or* law ignores insignificant details.

or

A common law principle whereby judges will not sit in judgment of extremely minor transgressions (offence, wrongdoings) of the law.

27. De novo – To make something anew.

28. Dictum – Statement of law made by judge in the course of the decision but not necessary to the decision itself.

29. Doli incapax – Incapable of crime.

30. Detinue – Tort of wrongfully holding goods which belong to someone else.

31. Donatio mortis causa – Gift because of death. (or a future gift given in expectation of the donor's imminent death and only delivered upon the donor's death.)

32. Estoppel – Prevented from denying.

33. Ex gratia – As favour.

34. Ex officio – Because of an office held.

35. Ex parte – Proceedings in the absence of the other party.

36. Ex post facto – Out of the aftermath. or After the fact.

37. Fatum – Beyond human foresight.

38. Factum probans – Relevant fact.

39. Fraus est celarefraudem – It is a fraud to conceal a fraud.

40. Functus officio – No longer having power or jurisdiction.

41. Furiosinulla voluntas est – Mentally impaired or mentally incapable persons cannot validly sign a will, contract or form the frame of mind necessary to commit a crime. *or* a person with mental illness has no free will.

42. Habeas corpus – A writ to have the body of a person to be brought in before the judge.

43. Ignorantia juris non excusat – Ignorance of the law excuses not *or* Ignorance of the law excuses no one.

In other words,

A person who is unaware of a law may not escape liability for violating that law merely because one was unaware of its content.

44. Injuria sine damno – Injury without damage.

45. Ipso facto – By the mere fact.

46. In promptu – In readiness.

47. In lieu of – Instead of.

48. In personam – A proceeding in which relief I sought against a specific person.

49. Innuendo – Spoken words which are defamatory because they have a double meaning.

50. In status quo – In the present state.

51. In er alia – Among other things.

52. Inter vivos – (especially of a gift as opposed to a legacy) between living people.

53. Interest Reipublicae Ut Sit FinisLitium – It means it is in the interest of the state that there should be an end to litigation.

54. Jus cogens (or **ius cogens**) – Compelling law.

55. Jus in personam – Right against a specific person.

56. Jus in rem – Right against the world at large.

57. Jus naturale – Natural law.

Or in other words,

A system of law based on fundamental ideas of right and wrong that is Natural Law.

58. Jus non scriptum – Customary law.

59. Jus scriptum – Written law.

60. Jus – Law or right.

61. Justitia nemininegandа est – Justice is to be denied to nobody.

62. Lex non a rege est violanda – The law must not be violated even by the king.

63. Locus standi – Right of a party to an action to appear and be heard by the court and be heard by the court.

64. Mala fide – In bad faith.

65. Malum in se or **Mala in se** (plural) – Wrong or evil in itself.

or

Mala in se is 'A term that signifies crime that is considered wrong in and of itself.'

For Example,

Most human beings believe that murder, rape, and theft are wrong, regardless of whether a law governs such conduct or where the conduct occurs and is thus recognizably malum in se.

66. Malum prohibitum – In a way opposite of Malum in se.

It means 'Crimes are criminal not because they are inherently bad, but because the act is prohibited by the law of the state.'

For example,

Jurisdiction in India requires drivers to drive on the left side of the road. This is not because driving on the right side of a road is considered immoral, but because the law says to drive on the left side and not on the right side.

67. Mandamus – 'We command'. A writ of command issued by a Higher Court to Government/Public Authority, to compel the performance of a public duty.

68. Mens rea – Guilty mind.

69. Misnomer – A wrong or inaccurate name or term.

70. Modus operandi – Way of working.

71. Modus Vivendi – Way of living.

72. Mutatis Mutandis – with the necessary changes having been made *OR* with the respective differences having been considered.

73. Nemo bis punitur pro eodem delicto – Nobody can be twice punished for the same offence.

74. Nemo debet bis vexari pro una et eadem causa – It means no man shall be punished twice for the same offence.

75. Nemo debetesse judex in propria causa or **Nemo judex in causa sua** or **Nemo judex** in **sua causa** – Nobody can be judge in his own case.

76. Nemo morituruspraesumiturmentire – A man will not meet his maker (God) with a lie in his mouth *or in other words* 'No man at the point of death is presumed to lie.' *(This maxim is related to DYING DECLARATION)*

77. Nemo Potestesse tenens et dominus – Nobody can be both a landlord and a tenant of the same property.

78. Nolle prosequi – A formal notice of abandonment by a plaintiff or prosecutor of all or part of a suit.

79. Novation – Transaction in which a new contact is agreed by all parties to replace an existing contract.

80. Nunc pro tunc – Now for then. A ruling nunc pro tunc applies retroactively to correct an earlier ruling.

81. Non Sequitur – A statement (such as a response) that does not follow logically from or is not clearly related to anything previously said.

82. Obiter dictum – Things said by the way. It is generally used in law to refer to an opinion or non-necessary remark made by a judge. It does not act as a precedent.

In other words,

Obiter dictum means "that which is said in passing," an incidental statement. Specifically, in law, it refers to a

passage in a judicial opinion which is not necessary for the decision of the case before the court. Such statements lack the force of precedent but may nevertheless be significant.

83. Onus probandi – Burden of proof.

84. Pacta Sunt Servanda – Agreements must be kept. *or* Agreements are legally binding.

In International Agreements it means 'every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

85. Pari passu – With an equal step. *Read more about it on Wikipedia.*

86. Particepscriminis – A participator in the actual crime/partner in crime.

87. Per curiam (decision or opinion) – By the court.

In other words,

The decision is made by the court (or at least, a majority of the court) acting collectively.

88. Per se – By itself.

89. Persona non grata – A person who is unacceptable or unwelcome.

Opposite of *persona non grata* is **persona grata.**

Also,

In diplomacy, a persona non grata is a foreign person whose entering or remaining in a particular country is prohibited by that country's government.

90. Prima facie – At first sight.

91. Alimony – a husband's (or wife's) provision for a spouse after separation or divorce; maintenance.

Palimony – Money which a man pays to a woman with whom he has been living and from whom he is separated. Palimony has slightly different meanings in different jurisdictions.

92. Per curiam – By a court.

93. Per incuriam – Because of lack of care.

94. Prima facie – On the face of it.

95. Quantum meruit – What one has earned. *or* The amount he deserves.

In other words,

A reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated (specified, written down) in a legally enforceable contract.

Source: Oxford

96. Qui facit per alium, facit per se – He who acts through another acts himself.

In simple words,

It is a fundamental legal maxim of the law of agency. It is a maxim often stated in discussing the **liability of the employer for the act of employee in terms of vicarious (indirect, secondhand) liability**.

97. Quid pro quo – Something for something.

98. Qui sentitcommodum, sentiredebet et onus – It means he who receives advantage must also bear the burden.

99. Quo warranto – By what authority. A writ calling upon one to show under what authority he holds or claims a public office.

100. Ratio decidendi – Principle or reason underlying a court judgement. *or* The rule of law on which a judicial decision is based.

101. Respondeat superior – Let the master answer.

For example,

There are circumstances when an employer is liable for acts of employees performed within the course of their

employment. This rule is also called the master-servant rule.

102. Res ipsa loquitor – The thing speaks for itself.

103. Res Judicata – A matter already judged.

104. Res Judicata Pro VeritateAccipitur – It means that a judicial decision must be accepted as correct.

105. Rex non protest peccare – The king can do no wrong.

106. Salus populi est suprema lex – The welfare of the is the supreme law.

107. Status quo – State of things as they are now.

108. Sine die – With no day (indefinitely).

109. Sine qua non – "without which nothing". An essential condition; a thing that is absolutely necessary. Basically a component of an argument that, if debunked, causes the entire argument to crumble.

110. Suo Motu – On its own motion.

111. Uberrima fides (sometimes **uberrimae fidei**) – Utmost good faith.

112. Ubi jus ibiremedium – Where there is a right, there is a remedy.

113. Ultra vires 'Beyond the powers' – Describing an act by a public authority, company, or other body that goes beyond the limits of the powers conferred on it. Ultra vires acts are invalid (compare intra vires). The ultra vires doctrine applies to all powers, whether created by statute or by a private document or agreement (such as a trust deed or contract of agency). In the field of public (especially administrative) law it governs the validity of all delegated and sub-delegated legislation. This is ultra vires not only if it contains provisions not authorized by the enabling power but also if it does not comply with any procedural requirements regulating the exercise of the power. The doctrine also governs the validity of decisions made by

inferior courts or administrative or domestic tribunals and the validity of the exercise of any administrative power. The decision of a court or tribunal is ultra vires if it exceeds jurisdiction, contravenes procedural requirements, or disregards the rules of natural justice (the power conferring jurisdiction being construed as requiring the observance of these). The exercise of an administrative power is ultra vires not only if unauthorized in substance, but equally if (for example) it is procedurally irregular, improperly motivated, or in breach of the rules of natural justice (substantive vs. procedural ultra vires). The remedies available for this second aspect of the doctrine are quashing orders, prohibiting orders, declaration, and injunction (the first two of these are public remedies, not available against decisions of domestic tribunals whose jurisdiction is based solely on contract).

114. Veto – Ban or order not to allow something to become law, even if it has been passed by a parliament.

115. Vice versa – Reverse position.

116. Vis major – Act of God.

117. Volenti non fit injuria – Damage suffered by consent gives no cause of action.

or in other words,

If someone willingly places himself in a position where he knows that harm might result, then he is not able (allowed) to bring a claim against the other party in tort or delict (a violation of the law).

118. Vox populi – Voice of the people. *or* The opinion of the majority of the people.

119. Waiver – Voluntarily giving up or removing the conditions.